

# **EXHIBIT V**

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SIGN IN


# Interactive. Personal. Training.

Trainer-controlled workouts—only with iFit.


ACTIVATE YOUR FREE TRIAL



"Never have I become so engrossed in my cardio workout."



"The antidote to every exercise excuse in the book."



"The array of workout choices is staggering."

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## Thousands of on-demand workouts




### Wide variety

Enjoy an ever-growing collection of Global Workouts and Studio Classes.



### Personalized workouts

Receive a workout that's tailored to your preferences delivered to your machine every day.



### World-class trainers

Get coached by more than 100 of the best personal trainers in the business.

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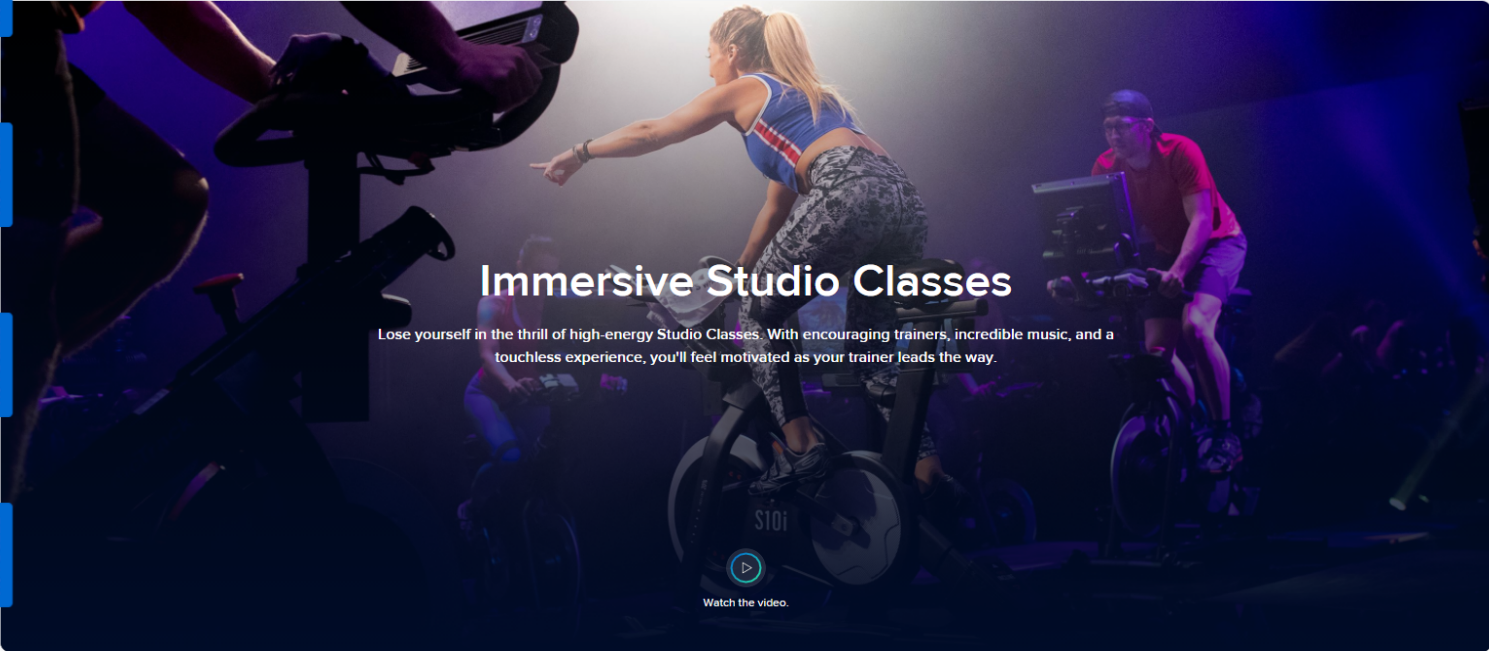
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## Immersive Studio Classes

Lose yourself in the thrill of high-energy Studio Classes. With encouraging trainers, incredible music, and a touchless experience, you'll feel motivated as your trainer leads the way.

Watch the video.





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# Stunning Global Workouts

Train and travel all over the world with Global Workouts. New destinations are constantly being added, so there's always a new place to explore!

Watch the video.

## Massive workout library

Work out with more than 100 world-class trainers and choose from thousands of on-demand workouts, ranging from weight loss to HIIT sessions to marathon training.

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Functional fitness  
JOHN PEEL




Intervals  
ELYSE MILLER




Hills  
HANNAH EDWARDS




Endurance and tempo  
ASHLEY PAULSON




Weight loss  
KRISTY GODSO



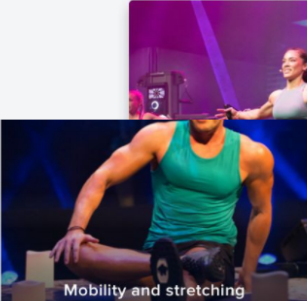
Recovery  
CHRIS CLARK




Walking tours  
SALIH BATKIN




Road  
RYAN PETRY



Mobility and stretching



HIIT



Lean and mean

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NICK HOUNSLOW

TANYA POPPETT

IDALIS VEL

# Interactive, trainer-led workouts

Spend less time fussing with buttons and more time focused on your workout. Your trainer will automatically adjust your incline, speed, and resistance to seamlessly match their instructions.



## The workout experience of a lifetime.

★ ★ ★ ★ ★ 4.7/5  
Average workout rating from our customers  
of over 700,000 reviews

Mamandaleigh

### So good for getting back into running!

I started trying to get back into running and a healthy lifestyle on my own. I couldn't find the motivation to keep to a schedule. Working with ifit trainings has been an awesome change. I love to look at the scenery and hear about the history and culture of the places the trainings take me to. I also find the interval training leaves me excited for the next workout because I don't hurt or feel like I'm overworking. Fantastic product!

Pat S

### Love the scenery and history

First video I've tried. Tommy is motivating, encouraging, and explains the plan as we go. Love the scenery and the history - great distraction! Lol

Nikki M

### It's awesome!

I purchased this to learn how to run safely and effectively and so far I'm loving it!



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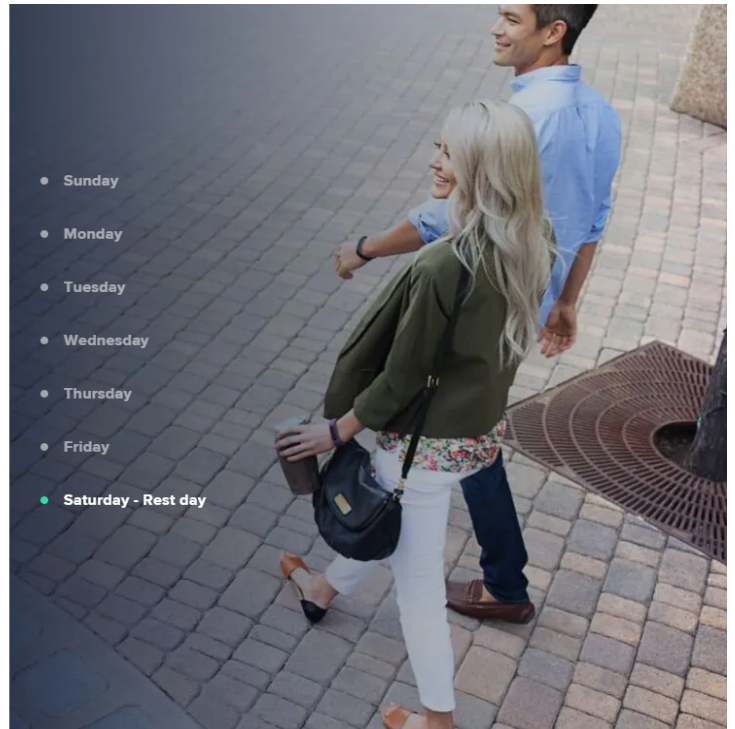
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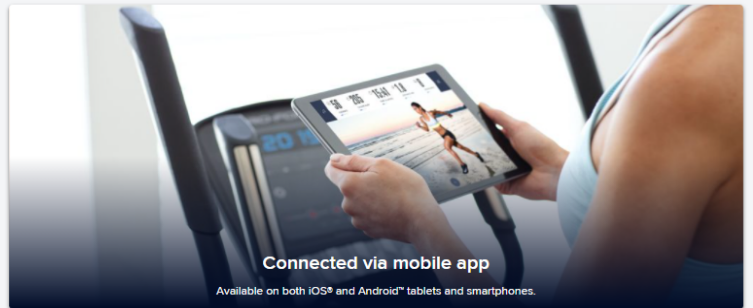
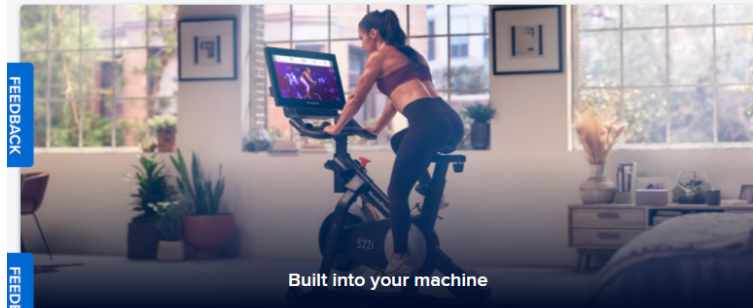
## Your complete fitness solution

Access a variety of trainer-led workouts on and off your equipment, with focuses on building strength, endurance, mobility, flexibility, mindfulness, and more.



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## How to experience iFit



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## Get interactive, trainer-led workouts.

ACTIVATE YOUR FREE TRIAL

Already a member? [Sign In.](#)

## FAQ

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What do I get with my iFit membership?

^

You'll have access to an ever-growing library of Global Workouts and Studio Classes—all led by world-class personal trainers. Our trainers will virtually take you all over the world, coach you through every workout, and automatically adjust your machine for you.

Why do I need to enter my credit card card information after I've already purchased my machine?

^

We only need your credit card information for renewal purposes. That way, we have a payment method on file when your subscription expires. Since your machine purchase is a separate transaction from your iFit subscription, your payment information isn't shared with us at the time of purchase.

Can I use the iFit Cardio app on my personal tablet or smartphone?

^

Yes! Simply go to the Apple® App Store or Google® Play, then download the iFit Smart Cardio Equipment app onto your tablet or smartphone. If you don't already have an iFit account, go to iFit.com to create an account. Then, simply sign in on your device.

What happens after my 30-day trial?

^

After your trial period ends, you'll be billed once every 30 days. Please keep in mind, you can cancel your membership at any time.

English ▾

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Terms of Use

# **EXHIBIT W**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ICON HEALTH & FITNESS, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	C.A. No. 20-1386-UNA
v.	)	
	)	<b>PUBLIC REDACTED VERSION</b>
PELOTON INTERACTIVE, INC.	)	
	)	
Defendant.	)	
	)	

**DECLARATION OF CLARKE B. NELSON**

OF COUNSEL:

David R. Wright  
MASCHOFF BRENNAN GILMORE  
ISRAELSEN & WRIGHT PLLC  
111 South Main Street, Suite 600  
Salt Lake City, Utah 84111  
(801) 297-1850

Sterling A. Brennan  
Tyson K. Hottinger  
MASCHOFF BRENNAN GILMORE  
ISRAELSEN & WRIGHT PLLC  
100 Spectrum Center Drive, Suite 1200  
Irvine, California 92618  
(949) 202-1900

Frederick L. Cottrell, III (#2555)  
Christine D. Haynes (#4697)  
RICHARDS, LAYTON & FINGER, P.A.  
920 N. King Street  
Wilmington, Delaware 19801  
(302) 651-7700  
cottrell@rlf.com  
haynes@rlf.com

*Attorneys for Plaintiff*

Dated: October 15, 2020

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ICON HEALTH & FITNESS, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	C.A. No. 20-1386-UNA
v.	)	
	)	<b>PUBLIC REDACTED VERSION</b>
PELOTON INTERACTIVE, INC.	)	
	)	
Defendant.	)	
	)	

**DECLARATION OF CLARKE B. NELSON**

I, Clarke B. Nelson, declare as follows:

**I. QUALIFICATIONS & EXPERIENCE**

1. I am a founder of InFact Experts LLC and related entities<sup>1</sup> that provide intellectual property, financial, forensic, data analytics, and dispute advisory services to counsel and client companies. I am a Certified Public Accountant (CPA), a Chartered Global Management Accountant (CGMA), and I am Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) by the AICPA.<sup>2</sup> I have consulted with numerous companies regarding economic and financial considerations in litigation as well as various non-litigation economic, licensing, commercialization, and valuation issues. This has included analyses of sales, costs, profits, license agreements, and other related economic and financial information.

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<sup>1</sup> My consulting work in this matter is on behalf of Fact Forensics LLC.

<sup>2</sup> InFact Experts LLC and Fact Forensics LLC are not CPA firms.

2. I have been retained as an expert to evaluate the economic impact of the use of technologies in a variety of industries, including software, fitness, health and nutrition, electronics, computers and hardware, telecommunications, consumer products, healthcare, and others. I have consulted and testified as an expert in matters in federal court, the International Trade Commission, state courts, arbitrations, and mediations.

3. I have been a featured speaker, instructor, and presenter in various settings, including universities/business schools, law schools, national conferences, state bar organizations, and CPA societies. I am also a member of the American Institute of Certified Public Accountants and the Utah Association of Certified Public Accountants.

4. Attached as **Attachment A** is my curriculum vitae, which summarizes my qualifications and includes a list of presentations and publications that I have authored and a list of cases in which I have testified in approximately the last four years.

5. InFact Experts LLC bills for the professional services rendered in this matter based upon stated hourly billing rates. My current rate for this engagement is \$550 per hour and the rates of individuals working under my direction range from \$200 to \$400.<sup>3</sup> Such professional fees are not contingent upon the outcome of this litigation.

## II. SCOPE OF ANALYSIS

6. I have been asked by counsel for ICON Health & Fitness, Inc. (“ICON”) to consider the economic impact and potential harm to ICON if defendant Peloton Interactive, Inc. (“Peloton”) is not enjoined from selling its home fitness product called the Bike+ (“Peloton Bike+” or “Accused Product”), which is associated with Peloton’s Auto Follow feature, and

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<sup>3</sup> A 10%-15% prompt payment discount applies when payments are made within an agreed upon timeframe.



which competes with ICON's NordicTrack S22i and S15i exercise bikes ("NordicTrack Studio Bikes") and ICON's ProForm Studio Bike Limited and Studio Bike Pro exercise bikes ("ProForm Studio Bikes") (collectively, the "ICON Studio Bikes").

### III. SUMMARY OF CONCLUSIONS

7. It is my understanding that Peloton's Accused Product directly competes with the ICON Studio Bikes. Peloton has reported significant success in growing its subscriber base and has promoted its prioritization of furthering that growth over profitability. Should Peloton be allowed to continue selling its Accused Product, these competitive actions combined with Peloton's efforts to copy ICON's patent-in-suit will only serve to further intensify Peloton's current and future competitive threat to ICON and ICON's own efforts to capture additional subscribers on a profitable basis. Such actions by Peloton, along with other factors discussed below, suggest that ICON will be exposed to significant economic risks and potential harm that will be difficult, if not impossible, to fully quantify, should Peloton be allowed to continue selling its Accused Product.

### IV. BACKGROUND

#### A. ICON

8. ICON, headquartered in Logan, Utah, was formed over 40 years ago.<sup>4</sup> The following excerpts from ICON's most recent public Financial Report describe ICON's business:<sup>5</sup>

We are one of the world's leading fitness equipment companies. We design, market, source, manufacture and distribute fitness equipment to consumers, retailers and gym owners. We own several leading brands and license other key brands in nearly every major category of fitness equipment in the industry. Founded in 1977, we have developed unique and innovative, high-quality

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<sup>4</sup> <https://www.iconfitness.com/#/our-story>.

<sup>5</sup> ICON Health & Fitness, Inc. Financial Report for the Fiscal Year Ended May 31, 2015, pp. 3, 5. ICON ceased publishing its annual "Financial Report" after its fiscal year 2015.

products. Our products are sold in several countries through thousands of retail locations as well as through online and direct consumer venues. We are known as a leader in fitness innovation, having introduced many products with new features to the industry and for continuous product innovations that consumers expect in fitness equipment.

...

ICON Health & Fitness, Inc. is a leader in the technological development of the fitness products industry. In recent years, despite the challenging economic environment, we have continued to invest in research and development. We have assembled a product development team which draws on its experience in sales, marketing, engineering and manufacturing to consistently deliver innovative designs to health and fitness-minded consumers. ICON Health & Fitness, Inc. currently owns 189 U.S. patents, 86 foreign patents and 191 pending patents applications throughout the world.

9. ICON promotes today that it holds about 330 patents and its products are available in more than 110 countries.<sup>6</sup> [REDACTED]

[REDACTED].<sup>7</sup>

10. In connection with many of its fitness equipment products, ICON markets its subscription-based iFIT training solution and related apps. iFIT.com further describes the iFIT interactive fitness training ICON offers its subscribers in the following excerpts:<sup>8</sup>

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<sup>6</sup> <https://www.bloomberg.com/news/articles/2020-10-05/icon-health-valuation-tops-7-billion-on-fresh-funding-eyes-ipo>.

<sup>7</sup> [REDACTED]

<sup>8</sup> <https://www.ifit.com>.

## Trainer-adjusted workouts

Your personal trainer will create your unique workout, then adjust your equipment's speed, incline, and resistance automatically.



## Always know what's next

Never wonder about what's best for you. Your trainer will tailor your workouts to your changing body.





## Immersive experience

Without the need to push buttons or turn knobs, you'll find yourself so engaged, it won't even feel like a workout.

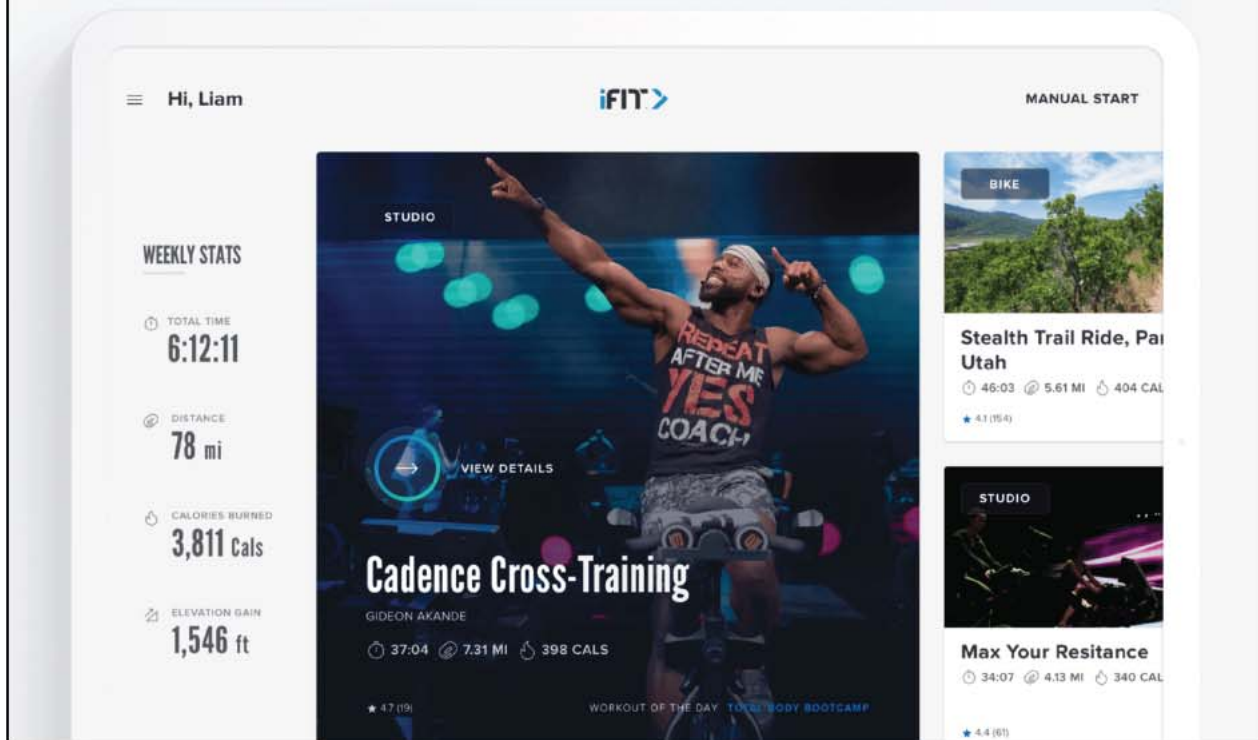


# Your personalized workouts

Your daily workouts are part of iFit's holistic fitness plan that will adapt to your improving body. Your trainers will adjust your workout intensity, recovery days, and calorie limits every day!

Select a user to view their unique training plan.

Liam Smith



11. iFIT is available on ICON's NordicTrack, Pro-Form, and FreeMotion brands across a wide variety of types of fitness equipment, including bikes, treadmills, rowers, ellipticals, and strength.<sup>9</sup>

## **B. Peloton**

12. Peloton, headquartered in New York City, was formed in 2012 and today promotes itself as "the largest interactive fitness platform in the world with a loyal community of over 3.1 million Members as of June 30, 2020."<sup>10</sup> Peloton's 2020 Form 10-K states:<sup>11</sup>

Our revenue is primarily generated from the sale of our Connected Fitness Products, the Peloton Bike, launched in 2014, and the Peloton Tread, launched in 2018, and associated recurring subscription revenue.

13. Peloton states it sells its products through a "direct to consumer, multi-channel sales model":<sup>12</sup>

We sell our products directly to customers through a multi-channel sales platform that includes e-commerce, inside sales, and showrooms. Our sales associates use robust customer relationship management tools to deliver an elevated, personalized, and educational purchase experience, regardless of channel of capture and conversion.

- *E-Commerce and Inside Sales:* Our desktop and mobile websites, [www.onepeloton.com](http://www.onepeloton.com), [www.onepeloton.co.uk](http://www.onepeloton.co.uk), [www.onepeloton.de](http://www.onepeloton.de) and [www.onepeloton.ca](http://www.onepeloton.ca), provide an elevated brand experience where visitors can learn about our products and services and access product reviews. Our inside sales team engages with customers by phone, email, and online chat on our websites, and offers one-on-one sales consultations seven days a week.
- *Showrooms:* Our showrooms allow customers to experience and try our products. We provide interactive product demonstrations and many of our showrooms have private areas where customers can do a "test ride" or "test run." We frequently host Peloton community events in our

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<sup>9</sup> <https://www.ifit.com>.

<sup>10</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, pp. 5, 10.

<sup>11</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 5.

<sup>12</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 8.

showrooms, which help deepen brand engagement and loyalty. As a result of the ongoing COVID-19 pandemic, we temporarily closed all of our retail showrooms, only some of which have since reopened.

- *Commercial:* The commercial and hospitality markets represent a small percentage of sales but are important to driving trial and brand awareness. Our Bikes in hospitality locations help keep our Members riding when they travel, creating further Member engagement, loyalty, and convenience. Across our markets as of June 30, 2020, there were over 2,200 Peloton Bikes in over 1,200 hotels and resorts.

14. Peloton recently introduced a new product, the Bike+, which I understand is alleged by ICON to infringe U.S. Patent No. 7,166,062 (“the ’062 Patent”) because of an Auto Follow feature, which Peloton touts as one of a handful of enhanced premium features. I understand Peloton’s inclusion of this Auto Follow feature to be the first time it has introduced a product containing remote interactive control of an exercise device. Simultaneous to its introduction of the Peloton Bike+, Peloton also announced that it lowered the price of its original Bike from \$2,245 to \$1,845 and will be offering a certified pre-owned Bike model that analysts anticipate will have a price point of approximately \$1,000 to \$1,250.<sup>13</sup> In addition, Peloton is offering existing Bike owners the option to trade-in their existing Bike for \$700 and a free yoga and toning package.<sup>14</sup> The price of the new premium Bike+ is \$2,495.<sup>15</sup>

15. In addition to its two cycling products, Peloton also offers two treadmill products, the Tread and the Tread+.<sup>16</sup>

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<sup>13</sup> <https://blog.onepeloton.com/new-peloton-bike-tread/>; <https://investor.onepeloton.com/news-releases/news-release-details/peloton-expands-product-suite-all-new-bike-and-tread-offering>; Peloton: Analyst Session Reinforces Our Confidence in PTON’s L-T Growth Opportunity & Apple Fitness+ Launch Mostly as Expected”, J.P. Morgan North America Equity Research, September 15, 2020, p. 1.

<sup>14</sup> “Peloton: Analyst Session Reinforces Our Confidence in PTON’s L-T Growth Opportunity & Apple Fitness+ Launch Mostly as Expected”, J.P. Morgan North America Equity Research, September 15, 2020, p. 1.

<sup>15</sup> <https://www.onepeloton.com/bike-plus>.

<sup>16</sup> <https://www.onepeloton.com/treads>.



**V. FACTORS INDICATING SIGNIFICANT ECONOMIC RISKS AND POTENTIAL HARM TO ICON**

**A. ICON and Peloton Compete Head-to-Head and in a Highly Competitive Market**

16. According to Peloton's 2020 Form 10-K:

We operate in a highly competitive market and we may be unable to compete successfully against existing and future competitors. Our products and services are offered in a highly competitive market. We face significant competition in every aspect of our business, including at-home fitness equipment and content, fitness clubs, in-studio fitness classes, and health and wellness apps. Moreover, we expect the competition in our market to intensify in the future as new and existing competitors introduce new or enhanced products and services that compete with ours.<sup>17</sup>

17. Peloton considers ICON to be a direct competitor, as demonstrated by the following statements:

ICON directly competes with Peloton in the at-home fitness equipment space.<sup>18</sup> ICON is a direct competitor to Peloton in the at-home fitness industry—Peloton and ICON compete to make sales of exercise products in the United States . . . .<sup>19</sup>

Then, in January of 2020, ICON launched an expensive, glossy video ad campaign for a new Peloton Bike copycat product that ICON calls the NordicTrack S22i Studio Cycle Bike. That ad, entitled "The Duel," shows two actors riding their NordicTrack bikes at the same time and competing against each other for a higher position on the iFit leaderboard. The iFit leaderboard ICON advertised in "The Duel," shown on the NordicTrack S22i Studio Cycle Bike, is an almost exact copy of Peloton's leaderboard.<sup>20</sup>

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<sup>17</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 13.

<sup>18</sup> Complaint for Patent Infringement, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. ICON Health & Fitness, Inc., U.S. District Court for the District of Delaware, May 15, 2020, p. 29.

<sup>19</sup> Complaint for Patent Infringement, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. ICON Health & Fitness, Inc., U.S. District Court for the District of Delaware, May 15, 2020, p. 39.

<sup>20</sup> Complaint for Patent Infringement, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. ICON Health & Fitness, Inc., U.S. District Court for the District of Delaware, May 15, 2020, p. 4.

18. Peloton previously identified at least two other competitors in Echelon Fitness, LLC and Flywheel Sports, Inc.,<sup>21</sup> however, I understand Flywheel recently filed for bankruptcy and plans to go out of business.<sup>22</sup> [REDACTED]

[REDACTED]

[REDACTED]

19. According to TraQline, which I understand is a market share database maintained by The Stevenson Company subscribed to and relied upon by ICON, as of June 2020, Peloton and NordicTrack are the number one and number two stationary bike brands as measured in dollar share. ProForm ranks fifth.<sup>24</sup>

20. The following table outlines my understanding of the parties' various relevant/competing products and their current listed sales prices:<sup>25</sup>

<sup>21</sup> Complaint for Patent Infringement, Trademark Infringement, Trade Dress Infringement, Trademark and Trade Dress Dilution, Trade Libel, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. Echelon Fitness, LLC, U.S. District Court for the District of Delaware, October 8, 2019, p. 36; Complaint for Patent Infringement, Peloton Interactive, Inc. v. Flywheel Sports, Inc., U.S. District Court for the Eastern District of Texas, Marshall Division, September 12, 2018, pp. 18-19.

<sup>22</sup> <https://www.bloomberg.com/news/articles/2020-09-15/flywheel-sports-will-close-adding-to-fitness-chain-wreckage>; <https://nypost.com/2020/09/16/flywheel-sports-files-for-bankruptcy-plans-to-shut-down/>.

<sup>23</sup> [REDACTED]

<sup>24</sup> TraQline Q2 2020 Brand: Dollar Share Report for Stationary Bike; <https://stevensoncompany.com/about-us/history/>.

<sup>25</sup> <https://www.nordictrack.com/exercise-bikes>; <https://www.proform.com/exercise-bikes>; <https://www.proform.com/exercise-bikes/studio-bike-pro>; <https://www.onepeloton.com/bike>; <https://www.onepeloton.com/bike-plus>.

<b>Product</b>	<b>Current Sales Price</b>
NordicTrack S15i Studio Cycle	\$1,599
NordicTrack S22i Studio Cycle	\$1,999
ProForm Studio Bike Limited	\$1,999
ProForm Studio Bike Pro <sup>26</sup>	\$1,403
Peloton Bike	\$1,845
Peloton Bike+	\$2,495

21. ICON has explicitly compared its NordicTrack Studio Bikes to Peloton's Bike:



Here are a few things to look for when you compare the two bikes:  
 First, compare Peloton's price. Be sure to note what is included and what is not included. Pay attention to shipping, warranty, and the cost of a 1-year membership. Then, go to NordicTrack.com and total the same options that Peloton offers: the bike, shipping, warranty, and a 1-year membership. I think you'll be pleasantly surprised at the value you get from NordicTrack.<sup>27</sup>

<sup>26</sup> The studio bike pro is offered at the same effective price as a three-year iFIT family membership, \$39 X 36 months = \$1,404.

<sup>27</sup> Complaint for Patent Infringement, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. ICON Health & Fitness, Inc., U.S. District Court for the District of Delaware, May 15, 2020, pp. 39-40.

22. NordicTrack Website<sup>28</sup>

The screenshot shows the NordicTrack website's product comparison page. At the top, the NordicTrack logo is on the left, and a 'Live Chat' button with the number '1.888.308.9616' is on the right. Below the logo is a navigation bar with links for TREADMILLS, BIKES, ELLIPTICALS, STRENGTH, ROWERS, and IFIT. The main banner features a woman on a Peloton bike with the text 'Which indoor bike will give you the experience you want?' and a 'WATCH COMPARISON' button. Below the banner, a comparison table lists the Peloton Bike at \$2,363\* and the NordicTrack S22i at \$2,198, each with an image of the respective bike. A small note at the bottom states 'Comparison was last updated on September 02, 2020'.

Peloton Bike	vs	NordicTrack S22i
\$2,363*		\$2,198
		

Comparison was last updated on September 02, 2020

23. In addition, a number of product reviews and videos, some of which have been viewed hundreds of thousands and even millions of times, specifically compare the Peloton Bike to the NordicTrack Studio Bikes.<sup>29</sup>

<sup>28</sup> <https://www.nordictrack.com/peloton-bike-compare>.

<sup>29</sup> For example, <https://www.youtube.com/watch?v=zW04zXaaT0M>; <https://www.youtube.com/watch?v=8KQRigQUEY0>; <https://www.youtube.com/watch?v=uuEOZe4LHfM>; <https://www.youtube.com/watch?v=4I9YmwzVvWU>; <https://www.exercisebike.net/blog/peloton-vs-nordictrack/>; <https://www.imore.com/peloton-vs-nordictrack-s22i>; <https://www.fitrated.com/peloton-vs-nordictrack-commercial-s22i-luxury-bikes-with-impressive-apps/>; [https://medium.com/@kevinjonesjj\\_91517/peloton-vs-nordictrack-how-to-choose-your-next-exercise-bike-79cdac506e8](https://medium.com/@kevinjonesjj_91517/peloton-vs-nordictrack-how-to-choose-your-next-exercise-bike-79cdac506e8); <https://www.treadmillreviewguru.com/nordictrack-s22i-bike-vs-peloton-bike-comparison/>.

24. The Peloton Bike has historically sold for \$2,245, but its price was lowered to \$1,845 upon release of the Bike+. With the addition of various packages of accessories, the price of the Bike and add-on products can reach as high as \$2,345.<sup>30</sup> The Bike+ sells for \$2,495, and up to \$2,945 with additional accessories.<sup>31</sup> According to Colleen Logan, ICON's Vice President of Marketing, the parties target the same customers primarily through the same direct-to-consumer sales channel.<sup>32</sup>

25. The nature of the highly competitive fitness equipment industry is further demonstrated by the recent announcement made by Echelon Fitness that it had released a new exercise bike on Amazon.com known as the "Prime Bike."<sup>33</sup> According to Bloomberg, the news resulted in Peloton shares declining by as much as 6.7% before rebounding upon Amazon's denial of a partnership with Echelon Fitness.<sup>34</sup>

26. Given the nature of the highly competitive industry, the direct competition between the parties, and the uncertainty in how consumers may react to new and/or modified competing products, it is difficult, if not impossible, to fully quantify the harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

## **B. The Economic Importance of Differentiating Technology**

27. An article by Bloomberg Law emphasizes the importance of intellectual property and differentiation in the fitness equipment industry:<sup>35</sup>

<sup>30</sup> <https://www.onepeloton.com/shop/bike>; <https://investor.onepeloton.com/news-releases/news-release-details/peloton-expands-product-suite-all-new-bike-and-tread-offering>.

<sup>31</sup> <https://www.onepeloton.com/shop/bike-plus>.

<sup>32</sup> Declaration of Colleen Logan, October 14, 2020.

<sup>33</sup> [https://www.wfnz.com/news/pr\\_newswire/pr\\_newswire\\_sports/echelon-launches-amazon-exclusive-connected-bike/article\\_cf7a3635-aba3-5d71-85a4-f22ad934f606.html](https://www.wfnz.com/news/pr_newswire/pr_newswire_sports/echelon-launches-amazon-exclusive-connected-bike/article_cf7a3635-aba3-5d71-85a4-f22ad934f606.html).

<sup>34</sup> <https://www.bloomberg.com/news/articles/2020-09-23/peloton-shares-rebound-after-amazon-denies-echelon-partnership>.

<sup>35</sup> <https://news.bloomberglaw.com/ip-law/pelotons-moat-depends-on-patent-challenges-it-may-not-win>.



Peloton Interactive Inc.'s lawsuit against a competing exercise bike is the latest in a growing list of intellectual property battles that will help shape whether the newly-public company can profit from its \$2,245 bikes and \$39 monthly subscriptions.

Peloton relies heavily on its patents, trademarked brand, and use of copyrighted material to justify its lofty prices and distinguish its fusion of bikes and interactive live and recorded workouts. Looking to defend that turf, the company sued Echelon Fitness LLC this month for allegedly ripping off its patents and trade dress, after suing Flywheel Sports Inc. for patent infringement last year.

But investment analysts say Peloton's IP may not be strong enough to stop competitors looking to undercut it. The company is fending off patent validity challenges at the Patent and Trademark Office and a lawsuit from the music industry, which says the company is using copyrighted music without permission.

Peloton, in its registration statement for its initial public offering, said it "depends in large part" on its intellectual property. If challenges invalidate the company's patents and cheaper options become available, "Peloton doesn't really have a moat around their business, and it would get commoditized very quickly," Bloomberg Intelligence analyst Mandeep Singh said.

The company's IPO document told investors that challenges could invalidate or narrow some of its rights, which "could reduce the value of our products, services, and brand." Peloton said it tries to comply with copyright law, but "cannot guarantee" it holds rights to every piece of music on its service, adding potential liability.

28. Peloton has also asserted, in its various Federal District Court complaints alleging claims against other fitness equipment companies, the importance of protecting one's intellectual property from imitation:

With Peloton's hard-fought success, competitors, including Defendant ICON, have attempted to free ride off Peloton's innovative technology.<sup>36</sup>

29. Such assertions appear consistent with Peloton's 2020 Form 10-K:

Our intellectual property rights are valuable, and any inability to protect them could reduce the value of our products, services, and brand.<sup>37</sup>

<sup>36</sup> Complaint for Patent Infringement, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. ICON Health & Fitness, Inc., U.S. District Court for the District of Delaware, May 15, 2020, p. 3.

<sup>37</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 22.

30. ICON similarly emphasizes the importance of protecting its intellectual property in its most recent public financial report:

Protection of our intellectual property rights is essential to keep others from copying the innovations that are central to our existing and future products.<sup>38</sup>

The fitness industry is intensely competitive. This intense competition results in a difficult operating environment that can be marked by erosion of average selling prices over the life of each product and rapid technological change resulting in limited product life cycles.<sup>39</sup>

31. According to Colleen Logan, ICON's Vice President of Marketing, consumers often make their purchase decision based on the offered features of an exercise machine. Furthermore, it is those unique features that help prevent commoditization of fitness equipment products and allow ICON to differentiate its products from competitors.<sup>40</sup>

32. Given the highly competitive industry, the asserted importance of product differentiation by both parties, and the threat of commoditization of products, it is difficult, if not impossible, to fully quantify the full harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

### **C. The Patent-in-Suit Contributes to Desirable Functionality**

33. I understand that the feature described in the '062 Patent contributes to desirability of the products ICON sells into the home fitness equipment market. According to Colleen Logan, ICON's Vice President of Marketing, ICON's patented remote-control feature (referred to by Peloton as Auto Follow) has been, and continues to be, a highly successful feature that drives demand for ICON products. It provides the means by which a user's home fitness

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<sup>38</sup> ICON Health & Fitness, Inc. Financial Report for the Fiscal Year Ended May 31, 2015, p. 10.

<sup>39</sup> ICON Health & Fitness, Inc. Financial Report for the Fiscal Year Ended May 31, 2015, p. 7.

<sup>40</sup> Declaration of Colleen Logan, October 14, 2020; Discussion with Colleen Logan.

equipment can be controlled remotely and adjusted to follow changes in intensity, resistance, speed, and incline/decline initiated by a remote or virtual instructor. ICON considers such remote control of a fitness device, provided through its iFIT platform, to be the “crown jewel” of iFIT.<sup>41</sup> I understand that Peloton is accused of infringing the ’062 patent through its implementation of a scaling control that is “configured to enable a user to select a value representative of the proportional change to be made to the packetized control signal” (the “Infringing Functionality”).<sup>42</sup>

34. On September 8, 2020, Peloton introduced the Infringing Functionality in its new accused Bike+ product priced at \$2,495 and simultaneously reduced the price of its Bike product to \$1,895. I understand Peloton’s related press release specifically identifies the Infringing Functionality as one of four new features available on the Bike+.<sup>43</sup>

***The Peloton Bike+ features:***

- *23.8" rotating HD touchscreen:* Seamlessly transition between cycling and floor-based workouts. The screen rotates 180 degrees left and right for easy viewing.
- *High-fidelity four-speaker sound system:* Clearer sound and quality for a more intense Instructor connection.
- *Gymkit™:* With just a tap, pair your Apple Watch® with the Bike+ to keep your metrics in sync.
- *Auto-Follow:* Stay focused on your workout with a touch-free, optional adjustment that automatically scales your resistance, based on Target Metrics. Throughout the class, the digitally-controlled resistance remembers where you fall within the Target Metrics and automatically adjusts based on instructor guidance, allowing you to fully lose yourself in the class.

35. An online reviewer similarly highlighted the Infringing Functionality in its review of the newly released Bike+.<sup>44</sup>

Last week Peloton announced their newest bike – the Peloton Bike+. This new unit includes a slightly larger (and now movable) screen, as well as an auto-follow resistance mode (what smart trainer/bike companies would call ERG mode).

<sup>41</sup> Declaration of Colleen Logan, October 14, 2020.

<sup>42</sup> Declaration of Dr. William C. Easttom II, October 14, 2020; Declaration of Colleen Logan, October 14, 2020.

<sup>43</sup> <https://investor.onepeloton.com/news-releases/news-release-details/peloton-expands-product-suite-all-new-bike-and-tread-offering>.

<sup>44</sup> <https://www.dcrainmaker.com/2020/09/peloton-bike-plus-details-features.html>.

## AN AUTO-FOLLOW WORKOUT:



First is the new Auto-Follow feature, which is effectively a fancy term of ERG workouts. Except, in reality it's actually a bit smarter than that. While a typical ERG workout keeps you locked to a given wattage level (e.g. 250w), the Peloton concept is a bit more advanced in that yes, it'll keep you locked to whatever resistance level the workout demands – but it'll also let you stray higher or lower in the typical instructor range.

That's because for most portions of Peloton workouts, instructors call out ranges, usually based on resistance levels (but also zones in the case of Power Zone workouts). So they might say 'Keep your resistance from 40 to 50'. Thus, depending on your athletic capabilities or how much you drank last night, you'd pick some portion of that range. More on that in a second.

36. In its recent earnings call, Peloton made the following statements related to its incorporation of the Infringing Functionality into its original Bike product:

Bike+, our exciting new follow-up to the bike that launched Peloton and created the Connected Fitness category, brings a new 360-degree rotating display, enhanced sound and digital resistance controls to provide a more seamless and immersive workout experience. We've listened to our member feedback and kept







what's special about our original bike but added features we know our members will love.<sup>45</sup>

37. I understand the following excerpts from NordicTrack's website promote the Infringing Functionality:<sup>46</sup>









## Let Our Trainers Move You

You'll get a one-of-a-kind workout experience as our iFit trainers use Automatic Trainer Control to adjust your cycle's resistance, incline, and decline.

-  **AUTOMATIC TRAINER CONTROL**
-  **CYCLE WITH ELITE PERSONAL TRAINERS**
-  **GLOBAL WORKOUTS**



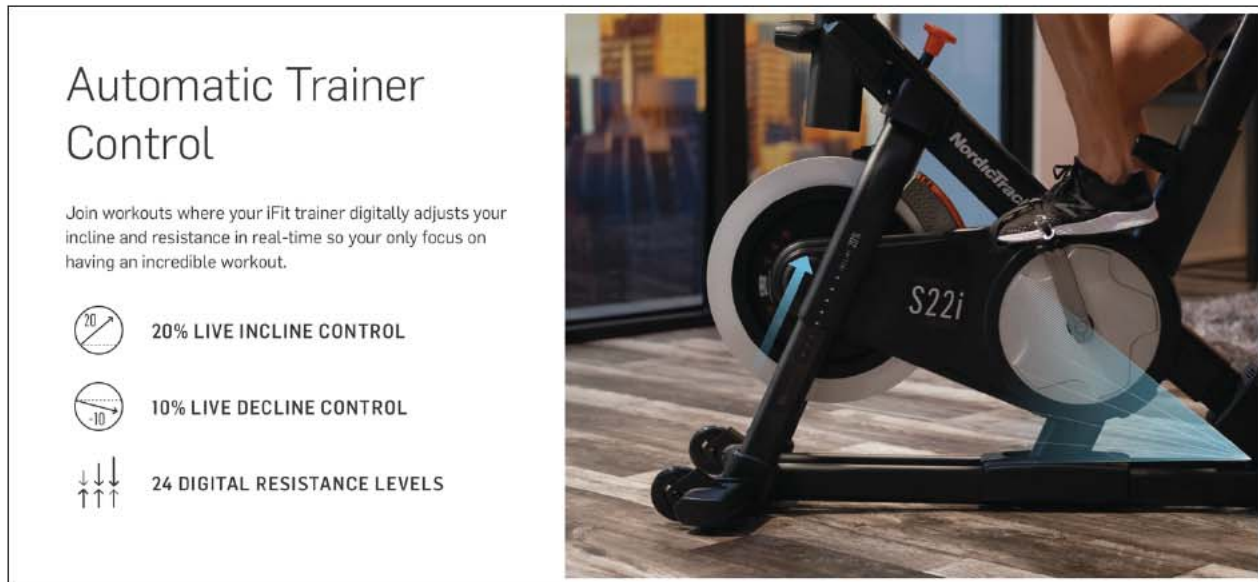
## Work Out Smarter with NordicTrack

 <p><b>INCREDIBLE ON-DEMAND WORKOUTS</b></p> <p>Get a great cycling workout whenever it works for your schedule. Our trainers are always there for you when you need them.</p>	 <p><b>GLOBAL WORKOUTS</b></p> <p>Cycle from Auckland to Oakland and everywhere in between. With global workouts you can ride all over the world.</p>	 <p><b>ELITE IFIT TRAINERS</b></p> <p>Our iFit trainers come from a diverse variety of backgrounds and training styles, so they will help you meet your loftiest fitness goals.</p>	 <p><b>AUTOMATIC TRAINER CONTROL</b></p> <p>Our trainers automatically adjust your incline, decline, and resistance. So just saddle up and move!</p>
 <p><b>DAILY RECOMMENDED WORKOUTS</b></p> <p>Get a set of workouts, recommended by world-class iFit trainers, delivered to you daily. With so much to choose from, there's something for everybody.</p>	 <p><b>GOOGLE MAPS™</b></p> <p>With our integrated Google Maps™ workout technology, you can bike anywhere in the world.</p>	 <p><b>TRACK YOUR STATS</b></p> <p>Stay plugged in to your progress with in-depth, personalized workout stats.</p>	 <p><b>CREATE 4 PROFILES</b></p> <p>One membership allows you to create up to 4 profiles, so the whole family can experience iFit on multiple machines.</p>

<sup>45</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, p. 3.

<sup>46</sup> <https://www.nordictrack.com/exercise-bikes/s22i-studio-bike>.





38. To the extent that Peloton is allowed to rely upon the Infringing Functionality to enhance its commercial success by way of its new premium-priced Bike+ and reduced-price Bike, this would prevent ICON from successfully differentiating itself from a direct competitor that has promoted an expanding product line. Given the uncertainty in market conditions that will follow Peloton's price reduction below its competitor's pricing, it is difficult, if not impossible, to fully quantify the full harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

**D. ICON Has Never Licensed the Infringing Functionality to a Competitor**

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>47</sup> Discussion with Colleen Logan.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>51</sup> My understanding of ICON's policy is consistent with its refusal to offer Peloton a license to its intellectual property in 2013 when Peloton's Chairman and CEO traveled to ICON's headquarters.<sup>52</sup>

41. Given the highly competitive market, ICON's unwillingness to license the patent-in-suit to a competitor, and ICON's historical practice of maintaining a monopoly on differentiating, patented functionality (including specifically with respect to Peloton), it is difficult, if not impossible, to fully quantify the full harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

**E. Sales of ICON's Competing Products Are Substantial**

42. From June 1, 2017 through August 31, 2020,<sup>53</sup> ICON has generated the following sales from its ICON Studio Bikes (**Schedule 1**):

48 [REDACTED]

[REDACTED]

[REDACTED]

<sup>52</sup> Declaration of Colleen Logan, October 14, 2020.

<sup>53</sup> ICON's fiscal year runs from June 1 to May 31.

Product	FY 2018	FY 2019	FY 2020	Q1 FY 2021 <sup>54</sup>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

43. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

46. The patent-in-suit's significant contribution to ICON's financial results and overall product offering magnifies the risk of ICON suffering harm from Peloton's infringement. The uncertainty surrounding the future impact of a premium-priced Accused Product and a lower-priced original Bike product makes it difficult, if not impossible, to fully quantify the full harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

**F. Peloton and ICON Generate Significant Revenue from Their Competing Subscription-Based Business Models**

47. Both ICON and Peloton charge \$39 per month for access to their respective interactive fitness training content and "member" benefits.<sup>59</sup> Retention of those subscribers is a key performance metric for both companies. Peloton discusses subscriber retention and its subscriber-based revenue model in its Form S-1:

Our compelling financial profile is characterized by high growth, strong retention, recurring revenue, margin expansion, and efficient customer acquisition. Our low Average Net Monthly Connected Fitness Churn, together with our high Subscription Contribution Margin, generates attractive Connected Fitness Subscriber Lifetime Value. When we acquire new Connected Fitness Subscribers, we are able to offset our customer acquisition costs with the gross profit earned on our Connected Fitness Products. This allows for rapid payback of our sales and marketing investments and results in a robust unit economic model.<sup>60</sup>

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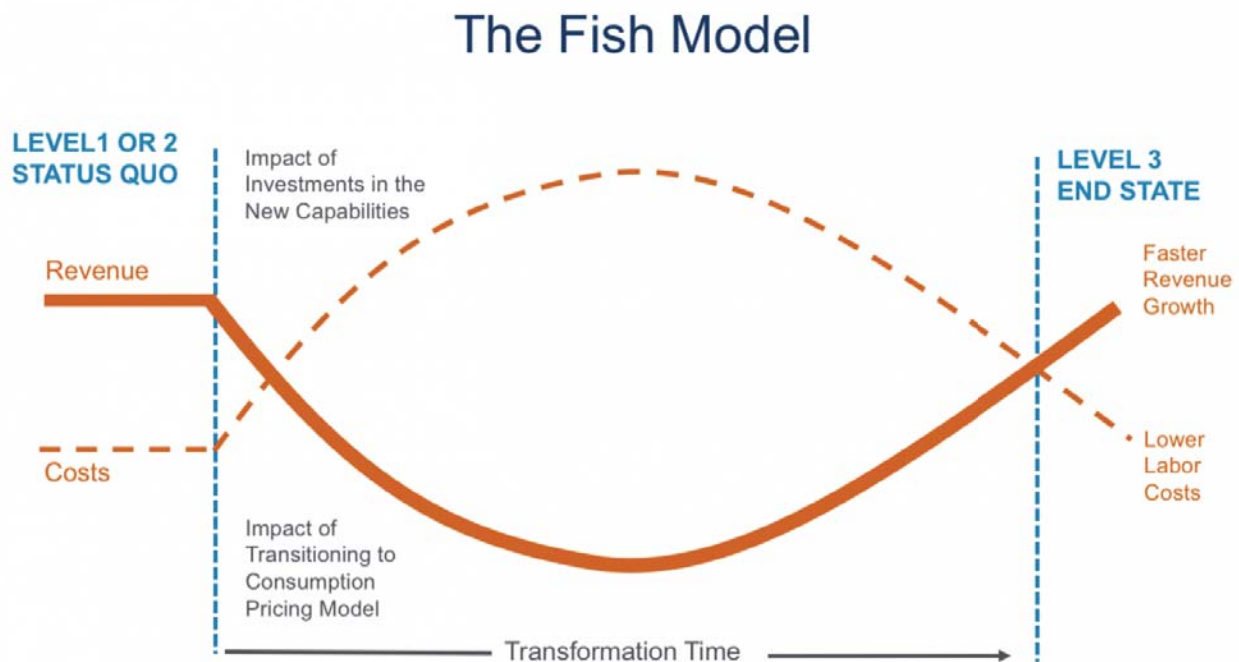
<sup>58</sup> Declaration of Colleen Logan, October 14, 2020.

<sup>59</sup> <https://www.ifit.com/register>; <https://www.onepeloton.com/membership>.

<sup>60</sup> Peloton Interactive, Inc. Form S-1 Registration Statement, August 27, 2019, p. 2.

48. Subscription-based business models are becoming ever more prevalent because of the opportunity they create to earn greater long-term profits. A Stanford Graduate School of Business article helps describe why subscription-based businesses are so desirable and how such businesses sacrifice some revenue and profits in the short term while capturing market share to eventually realize greater profit in the long run:<sup>61</sup>

You can actually keep selling your product and sell new digital subscription services, like Fender does — its Fender Play offers access to online lessons for \$9.99 a month — or, if it's a complete switch to subscription, you can face what Thomas Lah and J.B. Wood (authors of *Technology-as-a-Service Playbook: How to Grow a Profitable Subscription Business*) dubbed “swallowing the fish.” Costs go up and revenue drops, but after the transformation to a subscription model is complete, costs go down and revenue comes back up. (See figure below.)



49. After launching its first product in 2014, Peloton’s first profitable year of business (based on adjusted EBITDA) came in its fiscal year ended June 30, 2020, when it generated

<sup>61</sup> <https://www.gsb.stanford.edu/insights/why-every-business-will-soon-be-subscription-business>.



approximately \$364 million in subscription revenue.<sup>62</sup> According to Peloton, however, such recent profits, in contrast to historical losses, may be due in large part to having stopped the majority of its advertising shortly after the global pandemic began.<sup>63</sup> Peloton continues to emphasize the importance of market share and gaining growth and retention of its subscriber base, while boasting a 64% subscription contribution margin with a long-term target of 70%.<sup>64</sup>

We're proud of how quickly we've achieved our profitability, but our priorities are unchanged. We will continue to invest aggressively in new product development, scaling our manufacturing capabilities, introducing new software features and adding more fitness and wellness programming in order to capitalize on what we believe is a massive global market opportunity.<sup>65</sup>

50. As of its Form S-1 filing in anticipation of its initial public offering in August 2019, Peloton projected the lifetime value of its then approximately 511,000 subscribers to exceed \$1 billion.<sup>66</sup> Since then, Peloton's subscriber base has grown to nearly 1.1 million subscribers and is estimated to grow to 2.1 million and 3.2 million subscribers by June 30, 2021 and June 30, 2022, respectively.<sup>67</sup>

51. Peloton is committed to growing its subscriber base and its lowering of the price on its original Bike is an apparent effort to further expand its market share:

For us, it was really important to lower the price of our bike by \$350. . . . We -- again, we're very excited to lower the price of the bike to make our products more accessible. And at \$49 a month for 39-month financing, we think that will be a very compelling offer and really help us expand our serviceable addressable market.<sup>68</sup>

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<sup>62</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 37.

<sup>63</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, p. 5.

<sup>64</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, p. 6.

<sup>65</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, p. 5.

<sup>66</sup> Peloton Interactive, Inc., Form S-1 Registration Statement, August 27, 2019, pp. 61, 64.

<sup>67</sup> "Peloton: Analyst Session Reinforces Our Confidence in PTON's L-T Growth Opportunity & Apple Fitness+ Launch Mostly as Expected", J.P. Morgan North America Equity Research, September 15, 2020, p. 5.

<sup>68</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, pp. 6, 9.

52. An equity analyst further discussed Peloton's plan to introduce an even lower priced pre-owned Bike to capture additional subscribers.<sup>69</sup>

PTON confirmed plans for a Certified Pre-Owned (CPO) Bike model, which we expect to roll out in the coming qtrs once PTON builds inventory from Bike+ trade-ins. PTON's research indicates CPO has the highest appeal to Digital subs (~500k), which should help with CF conversion & further grow PTON's SAM given a lower price point (~\$1,000-1,250?). We note PTON is offering existing Bike owners a trade-in offer of \$700 and free Yoga & Toning package.

53. The economic significance of Peloton's growing subscriber base is potentially further observed in the change in Peloton's market capitalization over the prior approximate six months during the COVID-19 pandemic:<sup>70</sup>



54. For example, as of March 31, 2020, Peloton reported 886,100 subscribers. Pelton then reached nearly 1.1 million subscribers as of June 30, 2020 and is expected to report at least

<sup>69</sup> "Peloton: Analyst Session Reinforces Our Confidence in PTON's L-T Growth Opportunity & Apple Fitness+ Launch Mostly as Expected", J.P. Morgan North America Equity Research, September 15, 2020, p. 1.

<sup>70</sup> [https://ycharts.com/companies/PTON/market\\_cap](https://ycharts.com/companies/PTON/market_cap).

1.3 million subscribers as of September 30, 2020.<sup>71</sup> During the same time period, Peloton's market capitalization has increased from approximately \$7.5 billion as of March 31, 2020 to nearly \$29 billion as of September 30, 2020. As of October 14, 2020, Peloton's market capitalization had reached nearly \$38 billion.<sup>72</sup>

55. Perhaps reflected in the observed significant growth of Peloton's market capitalization, John Foley, Peloton Chairman and CEO, recently stated his expectation that Peloton will reach 100 million subscribers in the future and outlined Peloton's plan to achieve this number of subscribers.<sup>73</sup> In its recent investor conference, Peloton further stated it will prioritize "Connected Fitness Subscription growth over profitability" and "margin dollars over margin percent."<sup>74</sup>

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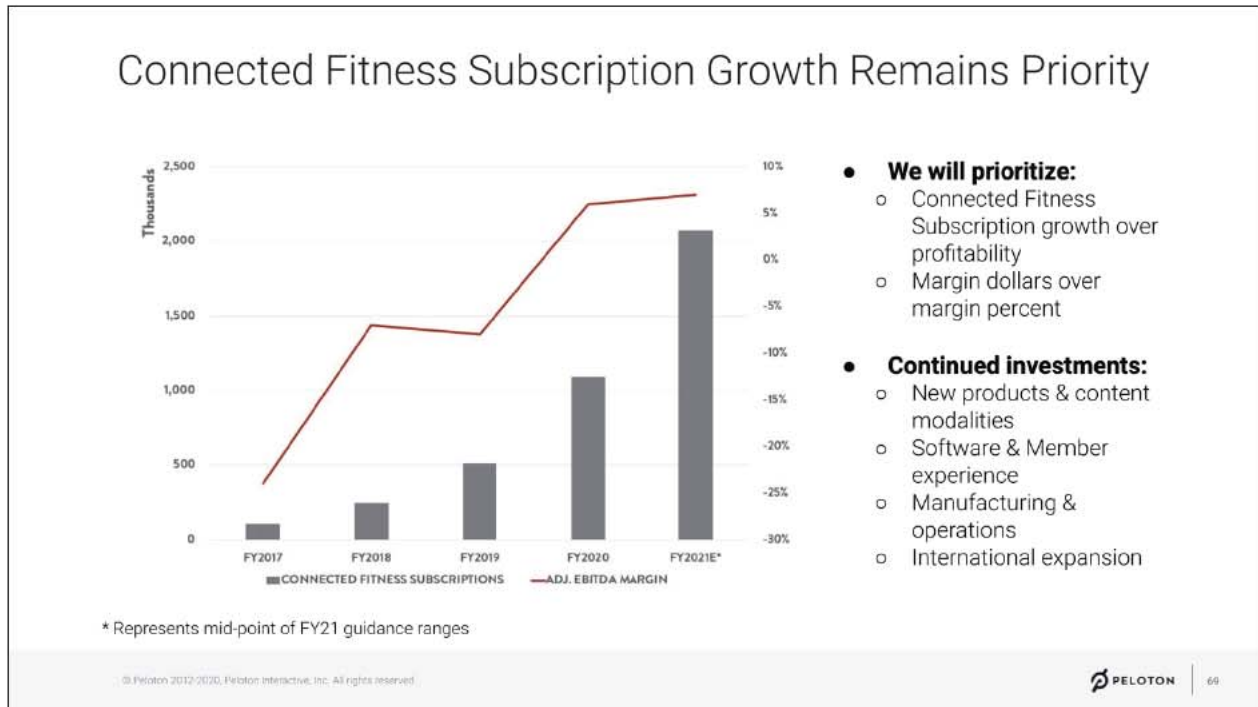
<sup>71</sup> "Peloton: Analyst Session Reinforces Our Confidence in PTON's L-T Growth Opportunity & Apple Fitness+ Launch Mostly as Expected", J.P. Morgan North America Equity Research, September 15, 2020, p. 5.

<sup>72</sup> [https://ycharts.com/companies/PTON/market\\_cap](https://ycharts.com/companies/PTON/market_cap).

<sup>73</sup> <https://investor.onepeloton.com/static-files/5155a9dc-1da8-4d6a-b232-3c231b8983b6>;

<https://www.foxbusiness.com/markets/peloton-ceo-predicts-100-million-users-within-10-years>.

<sup>74</sup> <https://investor.onepeloton.com/static-files/5155a9dc-1da8-4d6a-b232-3c231b8983b6>.



56. ICON also relies heavily upon its subscription revenues, today more than ever.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

57. ICON's subscriber base has also grown significantly during the prior six months of the COVID-19 pandemic. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

58. Given the highly competitive market, the importance of and related growth of the parties' respective subscriber bases/corresponding market shares, Peloton's willingness to sacrifice profitability for further growth of its subscriber base, [REDACTED]

[REDACTED]

it is difficult, if not impossible, to fully quantify the full harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

**G. Peloton and ICON Generate Significant Revenue from Their Competing Subscription-Based Business Models**

59. Both parties acknowledge the economic importance of the opportunity to exploit their respective subscriber bases to sell additional products and increase the lifetime value of subscribed consumers beyond merely selling an initial fitness equipment product and garnering monthly subscription revenues during the expected lifetime of the subscriber relationship (which Peloton and ICON estimate to be 13 years and [REDACTED] respectively).<sup>78</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>77</sup> [REDACTED]

<sup>78</sup> Peloton: 1 / Average Net Monthly Connected Fitness Churn of 0.62% = 161 months / 12 months = 13 years (Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 5); ICON: Declaration of Colleen Logan, October 14, 2020.



[REDACTED]

[REDACTED].<sup>79</sup>

60. Peloton has promoted the importance of and its intention to expand its sales to include accessories and additional fitness equipment and branded apparel:

We also expanded our fitness and wellness content offerings in strength, yoga, meditation, and new floor-based categories such as Fit Family and Dance Cardio. Our Member engagement levels continued to increase in fiscal 2020 in part due to our Members' use of floor-based content, led by strength classes which posted the most significant year-over-year gains.<sup>80</sup>

61. For example, in its Q4 2020 Earnings Call, Peloton described its change to report apparel as part of connected fitness product sales, because of how it views the "interplay" between the two:

As many of you know, a large percentage of our apparel sales are related to Peloton's referral program, which helps drive sales of our connected fitness products. Therefore, this change in reporting reflects how we think about the interplay between apparel and connected fitness product sales.<sup>81</sup>

62. Peloton recognizes the expansive number of products that utilize iFIT and its remote control technology<sup>82</sup> and has expressed the desire to expand beyond its own Bike products and current apparel offerings. Peloton reported that as of June 30, 2020 "approximately 2% of our Connected Fitness Subscriptions owned both a Bike and a Tread."<sup>83</sup> Peloton recently

<sup>79</sup> [REDACTED]

<sup>80</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 41.

<sup>81</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, p. 4.

<sup>82</sup> Complaint for Patent Infringement, False Advertising, and Unfair Business Practices, Peloton Interactive, Inc. v. ICON Health & Fitness, Inc., U.S. District Court for the District of Delaware, May 15, 2020, pp. 4-5.

<sup>83</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 44.

renamed its \$4,295 treadmill the Tread+ and introduced a significantly lower-priced model named the Tread at \$2,495<sup>84</sup> and believes treadmills to be multiples of its bike opportunity:

We are as confident as ever that our new tread, combined with our existing tread, now known as Peloton Tread+, is a better best tread hardware portfolio that represents an enormous growth opportunity for Peloton over the coming years, multiples of our bike opportunity as we view the tread line as a portal to a full-body workout.<sup>85</sup>

63. Shortly after Peloton's IPO in fall 2019, one market analyst further commented:

Consumers largely think of Peloton as a bike/spin company due to the popularity and dominance of its eponymous bike, but LT opportunity from treadmills could actually be larger due to broader popularity of treadmills vs. stationary bikes, both in the US & International.<sup>86</sup>

64. An equity analyst further asked Peloton about its intentions for product expansion.<sup>87</sup>

Q. And then, John, you're clearly talking about strength and boot camps a lot more here, and we see that with the rotating screen on Bike+ and then also the Tread is a gateway to strength. What are your current views around the specific hardware product that's strength-focused?

A. Yes, we -- as you know, we love strength. We need to win strength from my perspective. We are going to, with our Bike line better best and our Trend line better best, we're clearly going to win cardio. And so strength is an important vertical for us to put a flag down on.

Clearly, if you're going to move all of your fitness programming into the home, strength is another complement to your cardio that we need to win. I will remind you, and I think you know this, Doug, with our new studios in New York and London, we have dedicated strength studios within those broader studios. We're going to have more and more programming for strength training, not just the bike boot camp, but with the lower-priced Tread, the treadmill workouts and tread boot camp, which I've said in the past, I think, are the best workouts because they're

<sup>84</sup> <https://investor.onepeloton.com/news-releases/news-release-details/peloton-expands-product-suite-all-new-bike-and-tread-offering>; <https://www.onepeloton.com/tread-plus>; <https://www.onepeloton.com/tread>.

<sup>85</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, p. 3.

<sup>86</sup> <https://markets.businessinsider.com/news/stocks/peloton-stock-price-analysts-initiate-coverage-are-overwhelmingly-bullish-undervalued-2019-10-1028616112>.

<sup>87</sup> Q4 2020 Peloton Interactive Inc Earnings Call (Edited Transcript), September 10, 2020, pp. 6-7.

both cardio and strength. And so we think that our approach here is going to be a winning approach.

With respect to other products in the marketplace, we haven't seen anything that we are -- personally that I'm not excited about. I'd like to work out with 3 weights and bands and body weight, and we're going to offer that in such volume that we think we're going to be able to win with our current approach.

65. Another analyst discussed anticipated expansion by Peloton to a rower:

In the meantime, we expect PTON to continue to improve its product offering w/more content & instructors, software enhancements, & ultimately a better/best strategy for Bike and Tread, along w/a Rower. We believe the lower-priced Tread has been pushed out from what was likely 2020, but that should still be a major product launch in 2021, w/market size potential 2-3x that of Bike.<sup>88</sup>

66. Given the opportunity to exploit a subscriber base to sell subscribers various add-on products throughout the expected life of a subscriber (currently estimated by the parties to be 13 years and nine years, respectively), the opportunity for future expansion of such add-on products, and Peloton's well documented intentions to target expansion through at least treadmills and strength products, it is difficult, if not impossible, to fully quantify the harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product. This consideration is only exacerbated by the unprecedented demand for connected and interactive home fitness products currently experienced during the COVID-19 pandemic.

#### **H. Peloton Has Achieved Substantial Commercial Success Without the Infringing Functionality**

67. Peloton has already proven its ability to generate substantial sales and achieve commercial success with its original Peloton Bike, which does not incorporate the Infringing Functionality. As disclosed in its 2020 Form 10-K, Peloton has generated approximately \$3.4

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<sup>88</sup> "Peloton: TOP IDEA – Shifting the Curve on Home Fitness Adoption & Pulling Forward Profit; Reit OW & PT to \$58", J.P. Morgan North America Equity Research, May 7, 2020, p. 1.

billion in total revenue in its last four fiscal years,<sup>89</sup> prior to the introduction of the Bike+ and its infringement of the '062 Patent.

68. Peloton is now offering the Infringing Functionality at a premium above a reduced market price for the original Bike, which threatens to undercut ICON's pricing of its competing products. Given the highly competitive industry and the unknown impact that Peloton's price reduction of the Bike will have on market share and potential downward price pressure on ICON's competing products, it is difficult, if not impossible to fully quantify the harm to ICON that this factor will have, should Peloton be allowed to continue selling the Accused Product.

#### **VI. Additional Information**

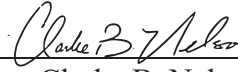
69. The considerations above are based upon my analysis to date. I reserve the right to add, change, rely on additional references in support of, and/or supplement any of the analysis set forth in this declaration should I become aware of additional relevant information. This declaration is intended solely for use in the above referenced litigation and is not to be used for any other purpose.

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<sup>89</sup> Peloton Interactive, Inc. Form 10-K for the Fiscal Year Ended June 30, 2020, p. 37.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

Dated: October 14, 2020

  
\_\_\_\_\_  
Clarke B. Nelson



**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing document will be served on Defendant Peloton Interactive, Inc. as follows:

**BY HAND DELIVERY**

Peloton Interactive, Inc.  
c/o Corporation Service Company  
251 Little Falls Drive  
Wilmington, DE 19808

I further certify that a true and correct copy of the foregoing Under Seal filing will be served by email on any counsel of record that makes an appearance pursuant to District of Delaware Local Rule 26.2 within 24 hours of any such appearance.

/s/ Christine D. Haynes  
Christine D. Haynes (#4697)  
Haynes@rlf.com

# **EXHIBIT X**



## LEGAL

# TERMS OF USE

## USER'S ACKNOWLEDGMENT AND ACCEPTANCE OF TERMS

These terms of use are entered into by and between You and ICON Health & Fitness, Inc., (together with its, affiliates, partners, licensors, subsidiaries, and/or related companies, "ICON," "us," "our," or "we"). The following terms and conditions, together with any guidelines, policies, rules notices, or other ancillary agreements, which are expressly incorporated by reference, including without limitation the Privacy Policy (these "Terms of Use") govern your access to and use of the ICON Health & Fitness websites, (each, an "ICON Site," and, collectively the "ICON Sites"), along with any downloadable applications, services, Content (as hereinafter defined), or interface provided by us, including iFit Services and ICON-controlled social media pages (including Facebook, Instagram, and Twitter), (individually, an "ICON Service," and collectively, the "ICON Services"). Certain ICON Services or materials may be subject to supplemental terms and conditions; your use of those ICON Services is subject to such additional terms and conditions, which are hereby incorporated by reference.

BY USING AN ICON SITE OR ICON SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS OF USE, THE PRIVACY POLICY, AND/OR ANY OTHER POLICY REFERENCED HEREIN. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF USE, YOU MUST DISCONTINUE YOUR USE OF THE ICON SITES AND ICON SERVICES. THESE TERMS OF USE BECOME EFFECTIVE IMMEDIATELY UPON COMMENCEMENT OF YOUR USE OF AN ICON SITE.

## MODIFICATIONS TO TERMS OF USE

We expressly reserve the right to change these Terms of Use from time to time without notice to you. You acknowledge and agree that it is your responsibility to review the ICON Sites and these Terms of Use periodically and to familiarize yourself with any modifications. Your continued use of an ICON Site after such modifications will constitute acknowledgement and agreement to the modified Terms of Use. Notwithstanding the preceding sentences of this paragraph, no revisions to these Terms of Use will apply to any dispute between you and ICON that arose prior to the effective date of those revisions.

## SALE OF PRODUCTS

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### SITE AND SERVICES ACCESS

We reserve the sole right to modify or discontinue an ICON Site or any portion of an ICON Site, at any time with or without notice to you. We will not be liable to you or any third-party should we exercise such right. Any new features that alter, modify, augment, enhance, or otherwise impact ICON Services on the ICON Sites shall also be subject to these Terms of Use.

You understand and agree that temporary interruptions of ICON Services available through the ICON Sites may occur as normal events. You further understand and agree that we have no control over third-party networks you may access during your use of the ICON Sites, and therefore, delays and disruption of other network transmissions are completely beyond our control.

### LICENSE

Subject to your acceptance and compliance with these Terms of Use, we grant you a non-exclusive, non-sublicensable, revocable, non-transferable, personal license to use the ICON Sites and the ICON Services for your own personal and non-commercial use. No ICON Site, or any portion of an ICON Site, may be reproduced, duplicated, copied, modified, sold, resold, distributed, visited, or otherwise exploited for any commercial purpose without our express written consent. Except as expressly set forth herein, these Terms of Use grant you no rights in or to our intellectual property. The license granted in this section is conditioned on your compliance with these Terms of Use. In the event that you breach any provision of these Terms of Use, your rights under this section will immediately terminate.

### OWNERSHIP OF INTELLECTUAL PROPERTY

The ICON Sites contain copyrighted material of ICON Health & Fitness, Inc. All Rights Reserved.

The ICON Sites and ICON Services, including all information, data, communications, software, photos, video, graphics, music (both sound recordings and the musical works embodied therein), sounds, and other material that can be viewed or heard by users on the ICON Sites, including message boards, chat, and other original content ("Content") are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws, and are the sole property of ICON or its licensors. You are only permitted to use the Content as expressly authorized by us or the specific Content provider. Except for a single copy of instructional materials provided to you by ICON and made for personal use only, you may not copy, reproduce, perform, display, modify, republish, upload, post, transmit, or distribute any or a portion of any Content or any documents or information from any ICON Site in any form or by any means without prior written permission from us or the specific Content provider, and you are solely responsible for obtaining

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result in criminal or civil penalties. We do not warrant or represent that your use of Content displayed on, or obtained through, an ICON Site will not infringe the rights of third-parties.

All custom graphics, icons, logos and service names are trademarks, registered trademarks or service marks of ICON Health & Fitness, Inc., or its affiliates, including without limitation the following: IFIT, ICON, NordicTrack, ProForm, Weslo, Image, FreeMotion, and HealthRider. All other trademarks or service marks are property of their respective owners. Nothing in these Terms of Use grants you any right to use any trademark, service mark, logo, and/or the name of ICON Health & Fitness, Inc.

The music on the ICON Site is used without any affiliation, connection, association or endorsement between the copyright owner or featured recording artist thereof, on the one hand, and ICON, any ICON product or service, or any third party products or services, on the other hand.

## PROHIBITED USES

You represent and warrant to us that you will not use any ICON Site (or any portion thereof) or ICON Service for any purpose that is against applicable local, state or federal laws, rules or regulations or otherwise prohibited by these Terms of Use. You shall not:

- Use cheats, automation software (bots), hacks, mods or any other software designed to modify an ICON Site or ICON Services;
- Use any ICON Site or ICON Service, or any part thereof for any commercial purpose;
- Use any third-party software that intercepts, "mines," or otherwise collects information from or through an ICON Site or ICON Service, including without limitation, any software that reads areas of RAM used by such ICON Service to store information the Services;
- Modify or cause to be modified any files that are a part of an ICON Site or an ICON Service in any way not expressly authorized by us;
- Host, provide or develop matchmaking services for an ICON Service, or intercept, emulate or redirect the communication protocols used by us in any way, for any purpose, including without limitation, unauthorized play over the Internet, network play, or as part of content aggregation networks;
- Facilitate, create or maintain a connection to an ICON Service, including without limitation (a) any connection to any server that emulates, or attempts to emulate, such ICON Service; or (b) any connection using programs or tools not expressly approved by us, except for your personal use; or
- Disrupt or assist in the disruption of: (a) any computer used to support an ICON Service or any game environment, or (b) any other user's use of an ICON Site or an ICON Service.

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ICON Site, you represent and warrant that you are eighteen (18) or older, or that your parent or guardian has registered you on such ICON Site and has expressly given you permission and that you agree to abide by these Terms of Use.

Subject to the laws of your country of residence, children between thirteen (13) and seventeen (17) years of age may establish and utilize an account with parent or guardian approval provided we receive the express written consent of such minor's parent or legal guardian. If you permit your minor child or legal ward (collectively, your "Child") to use an account for an ICON Site or ICON Services, you hereby agree to these Terms of Use on behalf of yourself and your Child, and you understand and agree that you will be responsible for all uses of the account by your Child whether or not such uses were authorized by you.

## REGISTRATION DATA AND PRIVACY

In order to access certain ICON Services on the ICON Sites, you will be required to create an account and password that can be obtained by completing our online registration form, which requests certain information and data ("Registration Data"). By registering, you agree that all information provided in the Registration Data is true and accurate and that you will maintain and update this information as required to keep it current, complete, and accurate. Registration is void where prohibited.

You are solely responsible for maintaining the confidentiality of your password and account and for any and all statements made and acts or omissions that occur through the use of your password and account, whether or not permitted or authorized by you. Therefore, you must take steps to ensure that others do not gain access to your password and account.

All information we obtain through your use of an ICON Site, including without limitation your Registration Data, is subject to our Privacy Policy, which is hereby incorporated by reference into these Terms of Use.

When you create an account, the default privacy setting is "public" and other members of the community may see information about your use of the ICON Services, including things like the date you signed up; the date, statistics, and associated location of each workout that you completed; your overall workout statistics; who you are following and who is following you; how many pieces of equipment are connected to your account; etc. To change your privacy settings to "private," log in to your account and select SETTINGS under your name in the right-hand corner. Select the SETTINGS tab on the dark gray menu bar. Scroll down the page to PRIVACY and check the box in front of "My profile is private." Please note that while your account may be private, other members of the community may still find your name from searching the community and send you "follow requests" and messages.

## IFIT SUBSCRIPTION TERMS

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apply to your iFit use and subscription during your Commitment Period and any subsequent Renewal Term (as hereinafter defined).

### Description of Services

The iFit Services may include, but are not limited to creation, customization, management, mapping, geolocation, routing, tracking, and analysis of your workouts, video workouts, support, and other like services. You are responsible for providing, at your own expense, all equipment necessary to use the iFit Services, including without limitation the iFit equipment and accessories of your choosing, an internet-enabled browsing device (i.e., a computer, tablet, or other device), and Internet access (including, but not limited to, payment of all fees associated with such access). The iFit Services track and record the function of your equipment and your use of the iFit Services to improve the iFit Services we provide.

iFit may record your geolocation data and may upload this geolocation data to your profile when synced with your account. This data may be date stamped and available for public display if your profile has not been set to the "My profile is private" setting. For more details on changing your Privacy Settings, please see section 9 (Registration Data and Privacy) and the Privacy Policy.

### Fees; Payment; Billing

Upon enrollment, you will select either a monthly payment option ("Monthly Payment Option") or an annual payment option ("Annual Payment Option"). You expressly agree that we are authorized to charge the monthly or annual fee for your subscription, at the currently advertised rate, together with any other costs, taxes, or incidental charges you incur in connection with your use of the iFit Services ("Membership Fees"), to your chosen payment method. Please note that Membership Fees are subject to change with notice to your email address associated with your account. It is your responsibility to ensure that the email address associated with your account is correct and that your email account will receive emails from us.

The Membership Fee will be billed to your payment method on the first day of your subscription (the "Start Date") and then on the corresponding calendar day at each subsequent billing interval (month, or year, as agreed upon during registration) thereafter (the "Bill Date") during your Commitment Period. In the event your subscription began on a day not contained in a given month, we will bill your payment method on the last day of the month following your Start Date. For example, if your Start Date was May 31st, and you are on a monthly payment schedule, your next Bill Date is June 30th. As used in herein, a "bill" shall indicate either a charge or debit, as applicable, to your payment method.

You authorize us to bill your payment method for Membership Fees on your Bill Date and to update and retain information about the payment method associated with your account during your Commitment Period and any Renewal Term. If we do not receive payment from your designated payment method on your Bill

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are responsible for all Membership Fees incurred under your account made by you or anyone who uses your account (including, but not limited to, your children, family or friends). After thirty (30) days from the date of any unpaid charges, your account will be deemed delinquent and we may terminate or suspend your account for nonpayment.

To view your billing information, sign in to your account and visit the "ACCOUNT BILLING" tab of your "SETTINGS" page to see the commitment period and renewal date. For certain payment methods, the issuer of your payment method may charge you a foreign transaction fee or related charges. Check with your bank and credit card issuers for details.

MEMBERSHIP FEES ARE REFUNDABLE ONLY IF CANCELED WITHIN THIRTY (30) DAYS OF THE ORIGINAL PURCHASE OR TRIAL DATE, AS PROVIDED HEREIN. TO CANCEL YOUR ACCOUNT DURING SUCH THIRTY (30)-DAY PERIOD, CALL (866) 608-1798 DURING REGULAR BUSINESS HOURS.

If you believe that you have been billed in error or have other billing inquiries, please notify us within thirty (30) days of the billing date by contacting (866) 608-1798. We will not issue credits or refunds after the thirty (30) day period has passed, except where required by applicable law.

### Automatic Renewal

UNLESS YOU CANCEL YOUR ACCOUNT OR NOTIFY US AT LEAST TWENTY FOUR (24) HOURS PRIOR TO THE EXPIRATION OF YOUR COMMITMENT PERIOD THAT YOU DO NOT WISH TO RENEW YOUR SUBSCRIPTION, YOUR IFIT SUBSCRIPTION WILL AUTOMATICALLY RENEW FOR AN ADDITIONAL MONTH, ONE (1) YEAR, OR TWO (2) YEAR PERIOD, AS APPLICABLE, FOR THE SAME DURATION AS YOUR INITIAL COMMITMENT PERIOD ("THE RENEWAL TERM"), AND YOU AUTHORIZE US TO BILL THE THEN-APPLICABLE MEMBERSHIP FEE AND ANY TAXES TO THE PAYMENT METHOD WE HAVE ON RECORD FOR YOU. WE RESERVE THE RIGHT TO DECLINE TO RENEW YOUR MEMBERSHIP IN OUR SOLE DISCRETION, WITHOUT ANY LIABILITY.

TO CANCEL YOUR ACCOUNT, YOU MAY (1) SIGN IN TO YOUR ACCOUNT, GO TO "SETTINGS", CLICK ON "ACCOUNT BILLING", AND CLICK THE "DOWNGRADE" BUTTON, OR (2) CALL (866) 608-1798 DURING REGULAR BUSINESS HOURS.

### Virtual Items

You acknowledge that the iFit Service may include a component of virtual goods, property, items or fictional credits or (collectively, "Virtual Items"). Virtual Items may be used exclusively within the iFit Service to gain access to and certain limited rights for use within certain features of the iFit Services. Virtual Items

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NO CASH VALUE AND THAT NEITHER WE NOR ANY OTHER PERSON OR ENTITY HAS ANY OBLIGATION TO EXCHANGE YOUR VIRTUAL ITEMS FOR ANYTHING OF VALUE, INCLUDING WITHOUT LIMITATION, REAL CURRENCY, AND THAT, IF YOUR ACCOUNT IS TERMINATED, SUSPENDED OR OTHERWISE MODIFIED OR IF YOUR RIGHT TO ACCESS THE SERVICE IS TERMINATED, THE VIRTUAL ITEMS AND YOUR ACCOUNT SHALL BE VOID AND HAVE NO VALUE.

We may charge fees for the right to access or use Virtual Items, and/or may distribute Virtual Items without charge, in our sole discretion. For example, we may, as a promotion or benefit of membership, provide users with a certain amount of Virtual Items based upon the completion of an activity (e.g., watching a video advertisement). You acknowledge and agree that we may revise or take action that impacts the perceived value of or pricing for any Virtual Items at any time except as may be stated in writing. All purchases of Virtual Items are final and under no circumstances will be refundable, transferable or exchangeable.

ICON has the absolute right to manage, regulate, control, modify and/or eliminate such Virtual Items as it sees fit in its sole discretion, and we shall have no liability to you or anyone else for the exercise of such rights. For example, Virtual Items may be lost, deleted from your account, or forfeited when/if your account is terminated, suspended or closed for any reason or when we discontinue any part of the iFit Services.

### Promotional Trial Memberships

From time to time, we may offer certain customers various trial or other promotional memberships, which are subject to these terms and conditions except as otherwise stated in the trial or promotional offer. We may limit the number of promotions for which you may be eligible in any given period, in our sole discretion.

### IFIT SLEEP SENSOR AND IFIT SLEEP APP

By purchasing, downloading and using the iFit Sleep Sensor and iFit Sleep app, you also agree to be bound by the [EarlySense Privacy Policy](#) and [Terms of Use](#).

### USER CONTENT

We may make message boards, blogging, profiles, bulletin boards or chat Services ("User Communication Services") available in iFit and ICON sites, either directly or through a third-party provider, that allow users to post, submit, publish, display, or transmit content or materials to other users (collectively, "User Content").

All User Content must comply with the User Content Standards set out in these Terms of Use. Any User Content you post via the iFit Services and ICON Services will be considered non-confidential and non-proprietary. By providing any User Content via the iFit Services and ICON Services, you grant us an



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right to grant the license granted above to us; (2) your User Content does not and will not infringe any intellectual property, contract, privacy or contract rights of any third party, and (3) your User Content does and will comply with these Terms of Use and the User Content Standards set forth below.

You understand and acknowledge that you are responsible for any User Content you submit or contribute, and you, not ICON, have fully responsibility for such User Content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third-party for the content or accuracy of any User Content posted by you or any other user of any ICON Site.

### User Content Standards

When you generate User Content, you agree that your User Content will comply with the following user content standards (the "User Content Standards") that you will not upload, share, post, or otherwise distribute or facilitate distribution of any content -- including, but not limited to, text, communications, software, images, sounds, data, or other information, that:

- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, contains explicit or graphic descriptions or accounts of sexual acts (including, but not limited to, sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates our rules or policies;
- victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- infringes on any patent, trademark, trade secret, copyright, right of publicity or privacy, or other proprietary or contract right of any party;
- constitutes unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;
- contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third-party;
- impersonates any person or entity, including without limitation any of our employees or representatives;  
or
- attempts to do any of the above.

We neither endorse nor assume any liability for the contents of any material uploaded or submitted by third-party users of any ICON Site, including, but not limited to, any unauthorized content posted by any of our employees or ex-employees. We do not pre-screen, monitor, or edit the User Content from User





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agree to hold us harmless from and against any responsibility or liability for offensive, indecent, or objectionable content and conduct, including without limitation sexually explicit content and content that violates these Terms of Use. You hereby consent to the removal of any of your inappropriate User Content and waive any claim against us arising out of such removal of content. See "Unauthorized Use of Materials" below for a description of the procedures to be followed in the event that any party believes that content posted on an ICON Site infringes on any patent, trademark, trade secret, copyright, right of publicity or privacy, or other proprietary right of any party.

In addition, you may not use your account to breach security of another account or attempt to gain unauthorized access to another network or server. Not all areas of iFit may be available to you or other authorized users of iFit. You shall not interfere with anyone else's use and enjoyment of iFit or iFit Services. Users who violate systems or network security may incur criminal or civil liability.

You agree that we may at any time, and at our sole discretion, terminate your iFit subscription without prior notice to you for violating these Terms of Use. In addition, you acknowledge that we will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in investigating suspected criminal violations.

You are solely responsible for your interactions with other users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

## SOCIAL MEDIA FEATURES

The ICON Sites may provide certain social media features that enable you to:

- Link from your own or certain third-party websites to certain Content on an ICON Site.
- Send emails or other communications with certain Content or links to certain Content, on an ICON Site.
- Cause limited portions of Content on an ICON Site to be displayed on your own or certain third-party websites.

You may use these features solely as they are provided by us, and solely with respect to the Content they are displayed with, and otherwise in accordance with these Terms of Use. The website from which you are linking must comply in all respects with the User Content Standards in these Terms of Use. We may disable any or all social media features and any links at any time without notice, in our sole discretion.

## THIRD-PARTY SITES AND INFORMATION

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and conditions (and applicable privacy policy) for such Third-Party Site. We are not responsible or liable to you, or any third-party, for the content or accuracy of any Third-Party Site.

### UNAUTHORIZED USE OF MATERIALS

Subject to our Privacy Policy, any communication or material that you transmit to an ICON Site or to us, whether by electronic mail, post, or other means, for any reason, will be treated as non-confidential and non-proprietary. While you retain all rights in such communications or material, you grant us and our agents and affiliates a non-exclusive, paid-up, perpetual, and worldwide right to copy, distribute, display, perform, publish, translate, adapt, modify, and otherwise use such material for any purpose regardless of the form or medium (now known or not currently known) in which it is used.

Please do not submit confidential or proprietary information to us unless we have mutually agreed in writing otherwise. We are also unable to accept your unsolicited ideas or proposals, so please do not submit them to us in any circumstance.

We respect the intellectual property of others, and we ask you to do the same. If you or any user of an ICON Site believes its copyright, trademark or other property rights have been infringed by a posting on any ICON Site, you or the user should send notification to our Designated Agent (as identified below) immediately. To be effective, the notification must:

- Identify in sufficient detail the copyrighted work that you believe has been infringed upon or other information sufficient to specify the copyrighted work being infringed).
- Identify the material that you claim is infringing the copyrighted work listed in item #1 above.
- Provide information reasonably sufficient to permit us to contact you (email address is preferred).
- Provide information, if possible, sufficient to permit us to notify the owner/administrator of the allegedly infringing webpage or other content (email address is preferred).
- Include the following statement: "I have a good faith belief that use of the copyrighted materials described above as allegedly infringing is not authorized by the copyright owner, its agent, or the law."
- Include the following statement: "I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."
- Sign the paper.
- Send the written communication to the Designated Agent:  
ATTN: Legal Department  
ICON Health and Fitness, Inc.

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the claims of the complaining party and the party that originally posted the materials will be referred to the United States Copyright Office for adjudication as provided in the Digital Millennium Copyright Act.

### MOBILE SERVICES; CONSENT TO RECEIVE MOBILE COMMUNICATIONS.

The ICON Sites may include certain ICON Services that are available via your mobile phone, including without limitation (i) the ability to upload content to via your mobile phone ("Mobile Uploads"), (ii) the ability to receive and reply to messages, and to write comments using text messaging ("Mobile Texts"), (iii) the ability to browse the ICON Sites from your mobile phone ("Mobile Web"), and (iv) the ability to access certain ICON Services through a mobile application you have downloaded and installed on your mobile phone, if applicable, (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. Therefore, you should check with your carrier to find out if the Mobile Services are available for your mobile devices, and what restrictions, if any, may be applicable to your use of such Mobile Services. By using the Mobile Services, you agree that we may communicate with you regarding ICON Services by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your profile settings and Registration Data to ensure that your messages are not sent to the person that acquires your old number.

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#### Mobile Terms and Conditions

- Effective Date: 2/7/2019
- Receive special text offers and deals from **iFit Promo Alerts** through your mobile device. Text **IFIT** to 97836 to receive 1–10 text messages per month with marketing promotions. **Message and data rates may apply.**
- By opting in to this service, you consent to receive mobile text alerts using an automatic telephone dialing system. Consent to receive marketing text messages is not required as a condition of purchasing any goods or services.
- By signing up, you are confirming that you are over the age of 13.

#### **STOP Information**

Text **STOP** to 97836 to stop receiving **iFit Perks** messages from **iFit** (you will receive a confirmation text).



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Wireless, Appalachian Wireless, Bluegrass Cellular, Carolina West Wireless, Cellcom, C-Spire Wireless (formerly Cellsouth), Cellular One of East Central Illinois, Cincinnati Bell Wireless, Cross (dba Sprocket), Duet IP, Element Mobile, EpicTouch, GCI Communications, Golden State, Hawkeye (Chat Mobility), Hawkeye (NW Missouri Cellular), Illinois Valley Cellular, Immix (Keystone Wireless / PC Management), Inland Cellular, iWireless, Mobi PCS (Coral Wireless LLC), Mosaic, MTPCS / Cellular One (Cellone Nation), Nex-Tech Wireless, nTelos, Panhandle Telecommunications, Peoples Wireless, Pioneer, Plateau, Revol Wireless, Rina - Custer, Rina - All West, Rina - Cambridge Telecom Coop, Rina - Eagle Valley Comm, Rina - Farmers Mutual Telephone Co, Rina - Nucla Nutria Telephone Co, Rina - Silver Star, Rina - South Central Comm, Rina - Syringa, Rina - UBET, Rina - Manti, South Canaan / CellularOne of NEPA, Thumb Cellular, Union Wireless, United, Viaero Wireless, West Central Wireless, Leaco, Nemont/Sagebrush. T-Mobile is not liable for delayed or undelivered messages.

We take your privacy seriously. Please visit our [Privacy Policy](#) to learn more.

## DISCLAIMER OF WARRANTIES

ALL MATERIALS AND SERVICES ON THE ICON SITES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTIES OF TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT (A) THE ICON SERVICES AND MATERIALS WILL MEET YOUR REQUIREMENTS, (B) THE ICON SERVICES AND MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE ICON SERVICES OR MATERIALS WILL BE EFFECTIVE, ACCURATE OR RELIABLE, OR (D) THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION PURCHASED OR OBTAINED BY YOU FROM AN ICON SITE FROM US, OUR AFFILIATES, OR THIRD-PARTIES WILL MEET YOUR EXPECTATIONS OR BE FREE FROM MISTAKES, ERRORS OR DEFECTS.

THE ICON SITES COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS. WE MAY MAKE CHANGES TO THE MATERIALS AND SERVICES ON THE ICON SITES AT ANY TIME, INCLUDING, BUT NOT LIMITED TO, THE PRICES AND DESCRIPTIONS OF ANY ICON SERVICES LISTED HEREIN, AT ANY TIME WITHOUT NOTICE. THE MATERIALS OR SERVICES ON THE ICON SITES MAY BE OUT OF DATE, AND WE MAKE NO COMMITMENT TO UPDATE SUCH MATERIALS OR SERVICES.

THE USE OF ICON SERVICES OR THE DOWNLOADING OR OTHER ACQUISITION OF ANY MATERIALS THROUGH ANY ICON SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES.

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WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH, OR IN CONNECTION WITH ANY ICON SITE, AND YOU UNDERSTAND AND AGREE THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT YOUR OWN RISK. ANY WARRANTY THAT IS PROVIDED IN CONNECTION WITH ANY PRODUCTS, SERVICES, MATERIALS, OR INFORMATION AVAILABLE ON OR THROUGH ANY ICON SITE FROM A THIRD-PARTY IS PROVIDED SOLELY BY SUCH THIRD-PARTY, AND NOT BY US OR ANY OTHER OF OUR AFFILIATES.

Content available through the ICON Sites often represents the opinions and judgments of an information provider, ICON Site user, or other person or entity not connected with us. We do not endorse, nor are we responsible for the accuracy or reliability of, any opinion, advice, or statement made by anyone, including without limitation our ex-employees, other than an authorized ICON Health & Fitness, Inc. spokesperson speaking in his/her official capacity.

You understand and agree that ICON Services available on the ICON Sites are provided "AS IS" and that we assume no responsibility for the timeliness, deletion, misdelivery or failure to store any user information or personalized settings.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

### LIMITATION OF LIABILITY

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IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD-PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF AN ICON SITE, ICON SERVICE, USER CONTENT, OR OF ANY WEBSITE REFERENCED OR LINKED TO FROM AN ICON SITE.

FURTHER, WE SHALL NOT BE LIABLE IN ANY WAY FOR THIRD-PARTY GOODS AND SERVICES OFFERED THROUGH ANY ICON SITE OR FOR ASSISTANCE IN CONDUCTING COMMERCIAL TRANSACTIONS THROUGH ANY ICON SITE, INCLUDING WITHOUT LIMITATION THE PROCESSING OF ORDERS.

IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING EXCLUSIONS OF LIABILITY, WE, OR ANY OF OUR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS OR AGENTS IS LIABLE TO YOU FOR ANY AMOUNTS UNDER THESE TERMS OF USE UNDER ANY THEORY OF RECOVERY, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, OUR (OR OUR AFFILIATES', DIRECTOR'S,





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arose or be forever barred. IN THE EVENT THAT YOUR JURISDICTION PROHIBITS THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THIS SECTION SHALL SURVIVE THE TERMINATION OF THESE TERMS OF USE OR ICON SERVICES.

### ASSUMPTION OF RISK

THE ICON SITES ENCOURAGE USERS TO PARTICIPATE IN CERTAIN PHYSICAL ACTIVITIES. BY USING AN ICON SITE AND/OR ICON SERVICES, OR PARTICIPATING IN SUCH ACTIVITIES, YOU ARE AGREEING THAT YOU HAVE CAREFULLY READ AND AGREED TO THESE TERMS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOU UNDERSTAND THE SAFETY HAZARDS, RISKS, DANGERS, AND POTENTIAL FOR INJURY ASSOCIATED WITH ANY PHYSICAL OR RECREATIONAL ACTIVITY. YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOU ARE IN GOOD HEALTH AND PHYSICALLY FIT TO PARTICIPATE IN THE ACTIVITIES MADE AVAILABLE THROUGH THE ICON SITES, THAT YOU HAVE NOT BEEN ADVISED OF ANY ADVERSE HEALTH CONDITIONS BY A PHYSICIAN, MEDICAL PRACTITIONER, OR OTHER HEALTH CARE PROVIDER, THAT YOU WILL NOT PARTICIPATE IN ANY OF THE ACTIVITIES MADE AVAILABLE THROUGH ANY ICON SITE UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR ANYTHING THAT COULD IMPAIR YOUR ABILITY TO SAFELY ENGAGE IN THE ACTIVITIES, AND THAT YOU WILL ONLY USE ICON SERVICES AND PRODUCTS IN ACCORDANCE WITH THEIR RECOMMENDED USES AND HEED ANY WARNINGS ASSOCIATED WITH ALL ICON SERVICES AND PRODUCTS. BY USING THE ICON SITES, THE ICON SERVICES, OR PHYSICALLY PARTICIPATING IN SUCH ACTIVITIES YOU AGREE TO ASSUME THE RISKS ASSOCIATED WITH SUCH ACTIVITIES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU FOREVER RELEASE, WAIVE AND DISCHARGE US, OUR SUBSIDIARIES, OWNERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES FROM ANY AND ALL LIABILITY FOR LOSS OR DAMAGE, AND FOR EVERY CLAIM OR CAUSE OF ACTION OF ANY KIND INCLUDING, BUT NOT LIMITED TO, BODILY INJURY, DEATH, OR PROPERTY DAMAGE, ARISING OUT OF YOUR PARTICIPATION IN THE PHYSICAL ACTIVITIES RECOMMENDED BY THE ICON SITES.

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### HEALTH AND SAFETY WARNING

YOU UNDERSTAND THAT THE ICON SERVICES ARE INTENDED TO BE USED IN CONNECTION WITH ATHLETIC AND FITNESS ACTIVITIES. YOU EXPRESSLY AGREE THAT ENGAGING IN ATHLETIC OR FITNESS ACTIVITIES AS PART OF THE ICON SERVICES CARRY CERTAIN INHERENT AND SIGNIFICANT RISKS OF PROPERTY DAMAGE, BODILY INJURY OR DEATH AND THAT YOU VOLUNTARILY ASSUME ALL KNOWN AND UNKNOWN RISKS ASSOCIATED WITH THESE ACTIVITIES EVEN IF CAUSED IN WHOLE OR IN PART BY THE ACTION, INACTION OR NEGLIGENCE OF ICON OR OTHERS. YOU ALSO EXPRESSLY AGREE THAT ICON DOES NOT ASSUME RESPONSIBILITY FOR THE INSPECTION, SUPERVISION, PREPARATION, OR CONDUCT OF ANY RACE, COMPETITION, CONTEST, GROUP INTERACTION, GATHERING, OR EVENT THAT UTILIZES THE SERVICES.



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DIABETIC, HAVE A HEART CONDITION, OR HAVE ANY INJURIES, DISABILITIES, OR OTHER MEDICAL CONDITION, YOU CERTIFY THAT YOU HAVE PERMISSION FROM YOUR PHYSICIAN, MEDICAL PRACTITIONER, OR OTHER HEALTH CARE PROVIDER TO BEGIN AN EXERCISE PROGRAM. YOU CERTIFY THAT YOU WILL START SLOWLY AND TAKE CARE NOT TO EXCEED YOUR CAPABILITIES WHEN EXERCISING. YOU SHOULD IMMEDIATELY STOP ANY ACTIVITY THAT CAUSES YOU TO BECOME DIZZY, DEHYDRATED, OR OTHERWISE AFFECTS YOUR BODY'S ABILITY TO FUNCTION NORMALLY. YOU SHOULD ALWAYS WEAR RECOMMENDED SAFETY EQUIPMENT WHEN PARTICIPATING IN ANY ACTIVITY RECOMMENDED BY THE ICON SITES. FAILURE TO DO SO MAY RESULT IN INJURIES. TO REITERATE YOUR AGREEMENT ABOVE, YOU AGREE THAT WE SHALL NOT BE RESPONSIBLE FOR ANY INJURIES YOU SUSTAIN WHILE PARTICIPATING IN ANY ACTIVITIES RECOMMENDED BY THE ICON SITES OR ICON SERVICES. YOU AGREE AND UNDERSTAND THAT IF YOU ARE INJURED WHILE EXERCISING, YOU WILL BE SOLELY RESPONSIBLE FOR ALL MEDICAL COSTS, DAMAGES, AND OUT-OF-POCKET EXPENSES, AND ANY CLAIMS MUST BE SATISFIED THROUGH YOUR PERSONAL HEALTH INSURANCE OR ASSETS.

### MEDICAL LIABILITY DISCLAIMER

The material in the ICON Sites and ICON Services is provided for educational and informational purposes only and is not intended as medical or nutritional advice. The information contained in the ICON Sites should not be used to diagnose or treat any illness, metabolic disorder, disease or health problem. Always consult your physician, medical practitioner, or other health care provider before beginning any nutrition or exercise program. Use of the programs, advice, and information contained in the ICON Sites is at the sole choice and risk of the user.

### INDEMNIFICATION

You shall defend, indemnify, and hold ICON and its respective directors, officers, employees, and agents harmless from all demands, actions, investigations, damages, claims, liabilities, whether actual or threatened, and all losses and expenses, including, but not limited to, attorneys' fees that ICON incurs or is required to pay, arising from your use or misuse of an ICON Site or ICON Service, violation of these Terms of Use, or actual or threatened claim that your User Content infringes any patent, trademark, trade secret, copyright, right of publicity or privacy, or other proprietary or contract right of any party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses. This indemnification shall survive the termination of these Terms of Use or ICON Services.

### ASSIGNMENT

We may assign, sell, or transfer our rights and obligations under this Agreement, in whole or in part, to any person or entity at any time without your consent, including our rights to payment under this Agreement.

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From time to time we may offer or allow you to participate in promotions, giveaways, contests or sweepstakes that we or a third-party administers on our behalf (each, a "Promotion") via the ICON Sites or ICON Services. Participation in any Promotion is subject to the official rules or guidelines governing that Promotion. We may announce rules in connection with any Promotion, but regardless of whether specific rules are announced, all such opportunities will be controlled by these Terms of Use, unless specifically superseded by Promotion-specific rules. In addition, as a condition to receiving any rewards, awards, giveaways, or prizes for participating in such Promotions, you may be required to provide additional information, to sign a release, or to authorize the use of certain biographical or other information about you in our advertising or marketing materials. If a third-party administers the Promotion, your participation may be subject to additional terms and conditions, and you should specifically read such third-party's rules, terms of service, and privacy policies before participating. You agree that we are not responsible for such third-parties' Promotions.

## ADVERTISEMENTS

From time to time, the ICON Sites and ICON Services may include advertisements offered by third-parties. You may enter into correspondence with or participate in promotions of the advertisers showing their products on the ICON Sites. Any such correspondence or promotions, including without limitation the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such correspondence or promotions, are solely between you and the advertiser. We assume no liability, obligation or responsibility for any part of any such correspondence or promotion.

## INTERNATIONAL USE

Although the ICON Sites and ICON Services may be accessible worldwide, we make no representation that materials on the ICON Sites are appropriate or available for use in locations outside the United States, and accessing them from territories where their contents are illegal is prohibited. Those who choose to access the ICON Sites from other locations do so on their own initiative and are responsible for compliance with local laws. Any offer for any product, Service, and/or information made in connection with the ICON Sites is void where prohibited.

## EXPORT CONTROLS

The Content contained in or utilized by ICON Services may not be re-exported, downloaded or otherwise exported into any country against which the U.S. Government maintains comprehensive economic sanctions or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Denied Persons List or Entity List. Additionally, we are also restricted from providing ICON Services to all such countries and/or individuals. You represent and



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In the event any litigation, action, or arbitration is brought by us in connection with these Terms of Use or your use of the ICON Services, ICON shall be entitled to recover from you its costs and other expenses, including reasonable attorneys' fees, incurred by us in such litigation, action, or arbitration.

### NO CLASS ACTIONS

You acknowledge and agree that you may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed under these Terms of Use.

### TERMINATION OF USE

You agree that we may, in our sole discretion, terminate or suspend your access to any or all of the ICON Sites with or without notice and for any reason, including without limitation breach of these Terms of Use. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating your relationship and may be referred to appropriate law enforcement authorities. Upon termination or suspension, regardless of the reasons therefore, your right to use the ICON Services and the ICON Sites shall immediately cease, and you acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the ICON Sites. We shall not be liable to you or any third-party for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection with such termination or suspension.

### GOVERNING LAW

The ICON Sites (excluding any linked sites) and ICON Services are controlled by us from our offices within the State of Utah, United States of America. The ICON Sites and ICON Services can be accessed from all fifty (50) states, as well as from other countries around the world. As each of these places has laws that may differ from those of Utah, by accessing the ICON Sites or ICON Services, both of us agree that the statutes and laws of the State of Utah, without regard to the conflicts of laws principles thereof, will apply to all matters relating to the use of the ICON Sites and the purchase of ICON Services available through the ICON Sites. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree to commence or prosecute any action in connection therewith in the State of Utah, Cache County, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction.

### ARBITRATION

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### ENTIRE AGREEMENT

These Terms of Use constitute the entire agreement and understanding between us concerning the subject matter of this agreement and supersede all prior agreements and understandings of the parties with respect to that subject matter. These Terms of Use may not be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for products or ICON Services which are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by you and us. To the extent that anything in or associated with the ICON Sites or ICON Services is in conflict or inconsistent with these Terms of Use, these Terms of Use shall take precedence.

### MISCELLANEOUS

You may not assign your rights and obligations under these Terms of Use to any party, and any purported attempt to do so will be null and void. We may freely assign our rights and obligations under these Terms of Use. In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of products and ICON Services available through the ICON Sites arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are enumerated above. If any part of these Terms of Use is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Any failure by us to enforce or exercise any provision of these Terms of Use or related rights shall not constitute a waiver of that right or provision.

### GOOGLE

[Google Maps™ Terms of Service](#)

[Google Privacy Policy](#)

### CONTACT INFORMATION

Except as explicitly noted on an ICON Site, the ICON Services available through the ICON Sites are offered by ICON Health & Fitness, Inc. located at 1500 South 1000 West, Logan, UT 84321. Our telephone number is (866) 608-1798. If you notice that any user is violating these Terms of Use, please contact us at [support@ifit.com](mailto:support@ifit.com).

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Other

Company

Account

Support

English ▾

Privacy notice

Terms of use

Do Not Sell My Personal Information

Customize cookie settings

Learn about our California privacy rights

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# **EXHIBIT Y**



## LEGAL

# PRIVACY NOTICE

Last Updated and Effective: January 1, 2020

Welcome to ICON's privacy notice.

ICON respects your privacy and is committed to protecting your personal data. This privacy notice will inform you as to how we look after your personal data and tell you about your privacy rights and how the law protects you.

This privacy notice is provided in a layered format, so you can click through to the specific areas set out below. Please also use the Glossary to understand the meaning of some of the terms used in this privacy notice.

## 1. IMPORTANT INFORMATION AND WHO WE ARE

### Purpose of this privacy notice

This privacy notice aims to give you information on how ICON collects and processes your personal data through your use of our websites and apps, including all websites and apps that link to this privacy notice. This privacy notice also applies to the information we collect when you use our products and services or when you interact with our sales team or customer service specialists. Our website, apps and products and services are not meant for children. We do not knowingly collect data from children.

It is important that you read this privacy notice together with any other privacy notice or fair processing notice we may provide on specific occasions when we are collecting or processing personal data about you, so that you are fully aware of how and why we are using your data. This privacy notice supplements the other notices and is not intended to override them.

### Controller

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We have appointed a data protection officer (DPO) who is responsible for overseeing questions in relation to this privacy notice. If you have any questions about this privacy notice, please [contact](#) the DPO. Individuals may exercise their legal rights by contacting the DPO. California residents may exercise their rights as explained in the [California Privacy Notice](#).

### Changes to the privacy notice and your duty to inform us of changes

- It is important that the personal data we hold about you is accurate and current. Please keep us informed if your personal data changes during your relationship with us.
- We reserve the right to update and change this Privacy Notice at any time without notice to you. We encourage you to frequently check this page for any changes to stay informed. Historic versions may be obtained by contacting us.

### Third party links

This website may include links to third party websites, plugins, and applications. Clicking on those links or enabling those connections may allow third parties to collect or share data about you. We do not control these third-party websites and are not responsible for their privacy statements. When you leave our website, we encourage you to read the privacy notice of every website you visit.

### Questions or Complaints

You have the right to make a complaint at any time to the supervisory authority for data protection issues in your jurisdiction. For example, the supervisory authority for data protection issues in the UK is the Information Commissioner's Office (ICO) at [www.ico.org.uk](http://www.ico.org.uk). We would, however, appreciate the chance to deal with your concerns before your supervisory authority, so please contact us in the first instance.

## 2. THE DATA WE COLLECT ABOUT YOU

Personal data, or personal information, means any information about an individual from which that person can be identified. It does not include data where the identity has been removed (anonymous data).

We collect personal information directly from you and indirectly about you as described below. We may collect, use, store, and transfer different kinds of personal data about you which we have grouped into categories as follows:



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- **Transaction data** includes details about payments to and from you and other details of products and services you have purchased from us.
- **Technical data** includes internet protocol (IP) address, your login data, browser type, and version, time zone setting and location, browser plug-in types and versions, operating system and platform, and other technology on the devices you use to access this website.
- **Profile data** includes your username and password, purchases or orders made by you, your interests, preferences, feedback, and survey responses.
- **Product Profile** includes your health and exercise data, including sleep and nutritional data or other physical patterns or rhythms from your workouts or fitness goals. It may also include information you share about your workouts or fitness goals, such as videos of a workout. We may use information that you share to create a profile of your aspirations, goals, and accomplishments to provide you with suggestions to help you reach the next level in your fitness challenge.
- **Usage data** includes information about how you use our website, products, and services.
- **Marketing and communications data** includes your preferences in receiving marketing from us and our third parties and your communication preferences.
- **Social Media Application Data** includes your public profile information, your social media connections, photos and "likes."
- **Geolocation information** may be recorded when you use certain features of our apps, which may be uploaded to your profile when synced with your account.

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We also collect, use, and share **aggregated data**, such as statistical or demographic data for any purpose. Aggregated data may be derived from your personal data, but is not considered personal data in law, as this data does not directly or indirectly reveal your identity. For example, we may aggregate your **usage data** to calculate the percentage of users accessing a specific website feature, data entered when using ICON sites, pages most frequently accessed, browser type, links a user clicks, and other similar information. However, if we combine or connect aggregated data with your personal data, so it can directly or indirectly identify you, we treat the combined data as personal data which will be used in accordance with this privacy notice.

We do not collect any **special categories of personal data** about you (this includes details about your race or ethnicity, religious or philosophical beliefs, sex life, sexual orientation, political opinions, trade union membership, genetic or fingerprint data, or use facial recognition), nor do we collect any information about criminal convictions and offenses.

### If you fail to provide personal data



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### 3. HOW IS YOUR PERSONAL DATA COLLECTED?

We may collect the categories of personal information described above either directly or indirectly from various categories of sources, including the following sources:

- **Direct interactions.** You may give us your identity, contact and financial data by filling in forms or by corresponding with us by post, phone, e-mail, or otherwise. This includes personal data you provide when you:
  - Apply for our products or services
  - Create an account on our website
  - Subscribe to our service or publications
  - Request marketing to be sent to you
  - Enter a competition, promotion, or survey
  - Give us feedback
- **Automated technologies or interactions.** As you interact with our website, we may automatically collect **technical data** about your equipment, browsing actions, and patterns. We collect this personal data by using cookies, server logs, and other similar technologies. We may also receive **technical data** about you if you visit other websites employing our cookies.
- **Cookies.** When you visit an ICON Site, we may assign your computer one or more cookies to facilitate access and to personalize your experience on that ICON Site. A cookie is a small text file that we place on a User's computer browser. Through the use of a cookie, we may also automatically collect information about your online activity on an ICON Site, such as the web pages you visit and the links you click. Most browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies. If you choose to decline cookies, please note that you may not be able to sign in or use some of the interactive features offered on ICON sites.
- **Other technologies.** We may use standard Internet technology, such as web beacons and other similar technologies, to track your use of ICON sites. Web beacons are tiny graphics that are embedded in the webpage and are used for similar purposes as cookies to track activity. We may also include web beacons in e-mail messages or newsletters to determine whether messages have been opened and acted upon. The information we obtain in this manner enables us to customize the services we offer to visitors of ICON Sites, to deliver targeted advertisements, and to measure the overall effectiveness of our online advertising, content, programming, or other activities.
- **Third parties or publicly available sources.** We may receive personal data about you from various third parties and public sources as set out below:
  - **Technical data** from the following parties:

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- **Contact, financial, and transaction data** from providers of technical, payment, and delivery services based inside or outside the EU
- **Identity and contact data** from data brokers or aggregators based inside or outside the EU
- **Identity and contact data** from publicly available sources based inside or outside the EU

### 4. HOW WE USE YOUR PERSONAL DATA

We will only use your personal data when the law allows us to. Most commonly, we will use your personal data for the following business purposes:

- When we need to **perform a contract** we are about to enter into or have entered into with you
- For the **provision of our products and services** or the operation of our business or a third party's business. All of our employees and contractors are required to follow our data privacy and security policies when handling personal information.
- Where it is **necessary for our legitimate interests** (or those of a third party), and your interests and fundamental rights do not override those interests
- When we need to **comply with a legal or regulatory obligation**
- Where we need to **protect your (or someone else's) interests**
- Where necessary in **connection with the sale, merger, acquisition** or other reorganization of our business
- For **marketing purposes**
- By creating an account with us, you agree that we may contact you for marketing purposes by phone, e-mail, mail, or text message, even if your number is on a do-not-call list or is a wireless number
- To **process transactions**

Generally, for those consumers located in the European Union, we do not rely on consent as a legal basis for processing your personal data, other than in relation to sending third party direct marketing communications to you via e-mail or text message. You have the right to withdraw consent to marketing at any time by contacting us.

California residents, please review the [California Privacy Notice](#) below for additional disclosures about how we may use your personal information.

### Other Purposes for which we will use your personal data

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purpose for which we are using your data. Please contact us if you need details about the specific legal ground we are relying on to process your personal data where more than one ground has been set out in the table below.

Purpose/Activity	Type of data	Lawful basis for processing including basis of legitimate interest
To register you as a new customer	<ul style="list-style-type: none"> <li>a. Identity</li> <li>b. Contact</li> </ul>	Performance of a contract with you
To process and deliver your order including: <ul style="list-style-type: none"> <li>a. Manage payments, fees and charges</li> <li>b. Collect and recover money owed to us</li> </ul>	<ul style="list-style-type: none"> <li>a. Identity</li> <li>b. Contact</li> <li>c. Financial</li> <li>d. Transaction</li> <li>e. Marketing and communications</li> </ul>	<ul style="list-style-type: none"> <li>a. Performance of a contract with you</li> <li>b. Necessary for our legitimate interests (to recover debts due to us)</li> </ul>
<div>FEEDBACK</div> To manage our relationship with you we will include: <ul style="list-style-type: none"> <li>a. Notifying you about changes to our terms or privacy policy</li> <li>b. Asking you to leave a review or take a survey</li> </ul>	<ul style="list-style-type: none"> <li>a. Identity</li> <li>b. Contact</li> <li>c. Profile</li> <li>d. Marketing and communications</li> </ul>	<ul style="list-style-type: none"> <li>a. Performance of a contract with you</li> <li>b. Necessary to comply with a legal obligation</li> <li>c. Necessary for our legitimate interests (to recover debts due to us)</li> </ul>



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survey	<div>c. Profile</div> <div>d. Usage</div> <div>e. Marketing and communications</div>	how customers use our products and services, to develop them and grow our business)
To administer and protect our business and this website (including troubleshooting, data analysis, testing, system maintenance, support, reporting, and hosting of data)	<div>a. Identity</div> <div>b. Contact</div> <div>c. Technical</div>	<div>a. Necessary for our legitimate interests (for running our business, provision of administration and IT services, network security, to prevent fraud, and in the context of a business reorganisation or group restructuring exercise)</div> <div>b. Necessary to comply with a legal obligation</div>
To deliver relevant website content and advertisements to you and to measure or understand the effectiveness of the advertising we serve to you	<div>a. Identity</div> <div>b. Contact</div> <div>c. Profile</div> <div>d. Usage</div> <div>e. Marketing and communications</div> <div>f. Technical</div>	Necessary for our legitimate interests (to study how customers use our products and services, to develop them, to grow our business, and to inform our marketing strategy)
<div>FEEDBACK</div> <div>Use data analytics to improve our website, products and services, marketing, customer relationships, and experiences</div>	<div>a. Technical</div> <div>b. Usage</div>	Necessary for our legitimate interests (to define types of customers for our products and services, to keep our website updated and relevant, to develop our business, and to inform our marketing strategy)



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or services that may be of interest to

you

c. Technical

d. Usage

e. Profile

### Marketing

We strive to provide you with choices regarding certain personal data uses, particularly around marketing and advertising.

### Promotional offers from us

We may use your **identity, contact, technical, usage, and profile data** to form a view on what we think you may want or need or what may be of interest to you. This is how we decide which products, services, and offers may be relevant for you (known in the industry as marketing).

You will receive marketing communications from us if you have requested information from us, have purchased goods or services from us, or if you provided us with your details when you entered a competition or registered for a promotion, and, in each case, you have not opted out of receiving that marketing.

### Third party marketing

We will get your express opt-in consent before we share your personal data with any company outside the ICON group of companies for marketing purposes.

### Opting out

You can ask us or third parties to stop sending you marketing messages at any time by logging into the website and checking or unchecking relevant boxes to adjust your marketing preferences, by following the opt-out links on any marketing message sent to you, or by contacting us with a request at any time.

California residents have additional opt out rights, which are explained in the [Right to Opt-out of Sale of Personal Information](#) section.

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You can set your browser to refuse all or some browser cookies, or to alert you when websites set or access cookies. If you disable or refuse cookies, please note that some parts of this website may become inaccessible or not function properly.

### Change of purpose

We will only use your personal data for the purposes for which we collect it, unless we reasonably consider that we need to use it for another reason, and that reason is compatible with the original purpose. If you wish to get an explanation as to how the processing for the new purpose is compatible with the original purpose, please contact us.

If we need to use your personal data for an unrelated purpose, we will notify you. If you are located in the European Union we will explain the legal basis which allows us to do so. If you are a California resident, we will obtain your consent to the new use.

Please note that we may process your personal data without your knowledge or consent, in compliance with the above rules, when this is required or permitted by law.

## 5. DISCLOSURE AND SHARING OF YOUR PERSONAL DATA

We may disclose or share your personal data to entities other than ICON for a business purpose. We may and during the last 12 months have disclosed or shared the categories of personal data listed above.

We may disclose for a business purpose and have in the last 12 months disclosed the above-listed categories of personal data to the following categories of third parties or service providers:

### Internal third parties

Other companies in the ICON group act as joint controllers or processors, provide IT and system administration services, and undertake leadership reporting.

### External third parties

— Service providers acting as processors based inside or outside the EU who provide IT and system administration services. We require all service providers to respect the security of your personal data

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accounting services.

- Regulators and other authorities acting as processors or joint controllers based inside or outside the EU who require reporting of processing activities in certain circumstances.
- Any other entity when required by law. For example, in response to a court order or subpoena. We may also disclose information in response to requests from law enforcement agencies or other public agencies if we feel that such disclosure may prevent the instigation of a crime.
- Third parties to whom we may choose to sell, transfer, or merge parts of our business or our assets. Alternatively, we may seek to acquire other businesses or merge with them. If a change happens to our business, then the new owners may use your personal data in the same way as set out in this privacy notice.
- Third parties for marketing purposes, including for analytics and the delivery of targeted advertising.

We may also sell your personal data for certain of the business purposes listed above. California residents please see the [California Privacy Notice](#) for additional information about how we may sell your personal information and how you may opt out of the sale of your personal information.

## 6. INTERNATIONAL TRANSFERS

We share your personal data within the ICON group. We store the information we collect—including your personal data—in the United States, so if you are accessing an ICON site from another country, your information is being transferred to and from the United States or outside of the European Economic Area (EEA).

We ensure that your personal data is protected by requiring all of ICON's companies to follow the same rules when processing your personal data. These rules are called binding corporate rules. For further details, see [European Commission: binding corporate rules](#). Moreover, sensitive and private data exchanged between an ICON site and you happens over an SSL secured communication channel and is encrypted and protected with digital signatures.

We want you to feel confident using the ICON sites. However, no system can be completely secure. Therefore, although we take steps to secure your information, we do not promise, and you should not expect, that your personal information, searches, or other communications will always remain secure. Users should also take care with how they handle and disclose their personal information and should avoid sending personal information through insecure email. Please refer to the [Federal Trade Commission's website](#) for information about how to protect yourself against identity theft.

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- When we use certain service providers, we may use specific contracts approved by the European Commission, which give personal data the same protection it has in Europe. For further details, see European Commission: Model contracts for the transfer of personal data to third countries.
- When we use providers based in the U.S., we may transfer data to them if they are part of the Privacy Shield which requires them to provide similar protection to personal data shared between the Europe and the U.S. For further details, see European Commission: EU-US Privacy Shield.

Please contact us if you want further information on the specific mechanism we use when transferring your personal data in or out of the EEA.

## 7. DATA RETENTION

We will only retain your personal data for as long as necessary to fulfil the purposes we collected it for, including for the purposes of satisfying any legal, accounting, or reporting requirements.

To determine the appropriate retention period for personal data, we consider the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorized use or disclosure of your personal data, the purposes for which we process your personal data, whether we can achieve those purposes through other means, and the applicable legal requirements.

Details of retention periods for different aspects of your personal data are set out in the table in paragraph four above.

By law, we must keep basic information about our customers (including **contact, identity, financial, and transaction data**) for seven years after they cease being customers, for tax purposes.

In some circumstances, you may ask us to delete your data. If we delete your account, your user profile will no longer be visible, and all of the information associated with your account will be permanently deleted. In some circumstances, we may anonymize your personal data (so that it can no longer be associated with you) for research or statistical purposes—in which case, we may use this information indefinitely without further notice to you. You may still receive promotional e-mails from us regarding new ICON products or services.

## 8. YOUR LEGAL RIGHTS





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- [Request access to your personal data](#)
- [Request correction of your personal data](#)
- [Request erasure of your personal data](#)
- [Object to processing of your personal data](#)
- [Request restriction of processing your personal data](#)
- [Request transfer of your personal data](#)
- [Right to withdraw consent](#)

If you wish to exercise any of the rights set out above, please contact us.

### No fee usually required

You will not have to pay a fee to access your personal data (or to exercise any of your other rights).

However, we may charge a reasonable fee if your request is clearly unfounded, repetitive, or excessive.

Alternatively, we may refuse to comply with your request in these circumstances.

### What we may need from you

We may need to request specific information from you to help us confirm your identity and ensure your right to access your personal data or to exercise any of your other rights. This is a security measure to ensure that personal data is not disclosed to any person who has no right to receive it. We may also contact you to ask you for further information in relation to your request to speed up our response.

### Time limit to respond

We try to respond to all legitimate requests within one month. Occasionally, it may take us longer than a month if your request is particularly complex or if you have made a number of requests. In this case, we will notify you and keep you updated. If you are a California resident, please see the [California Privacy Notice](#) for information about our timing to respond to your requests.

### Advertising disclaimer

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across their different devices and websites. The ads simply follow the user to the sites they visit.

## 9. GLOSSARY

### LAWFUL BASIS

Legitimate interest means that we conduct and manage our business to enable us to give you the best services and products and the most secure experience. We consider and balance any potential impact on you (both positive and negative) and your rights before we process your personal data for our legitimate interests. We do not use your personal data for activities where our interests are overridden by the impact on you (unless we have your consent or are otherwise required to or permitted by law). You can obtain further information about how we assess our legitimate interests against any potential impact on you in respect of specific activities by contacting us.

**Performance of contract** means processing your data where it is necessary for the performance of a contract to which you are a party or to take steps at your request before entering into such a contract.

**Comply with a legal or regulatory obligation** means processing your personal data where it is necessary for compliance with a legal or regulatory obligation that we are subject to.

### YOUR LEGAL RIGHTS

Individuals that are not residents of California have the rights described below. If you are a resident of California, information about your consumer rights can be found under the [California Privacy Notice](#).

**Request access** to your personal data, commonly known as a **data subject access request**. This enables you to receive a copy of the personal data we hold about you and to check that we lawfully process it.

**Request correction** of the personal data that we hold about you. This enables you to have any incomplete or inaccurate data we hold about you corrected, although we may need to verify the accuracy of the new data you provide us.

**Request erasure** of your personal data. This enables you to ask us to delete or remove personal data where there is no good reason for us continuing to process it. You also have the right to ask us to delete or remove your personal data when you have successfully exercised your right to object to processing (see below), when we may have processed your information unlawfully, or when we are required to erase your personal data to comply with local law. Note, however, that we may not always be able to comply with your

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on this ground, as you feel it impacts on your fundamental rights and freedoms. You also have the right to object when we process your personal data for direct marketing purposes. In some cases, we may demonstrate that we have compelling, legitimate grounds to process your information which override your rights and freedoms.

**Request restriction** of processing of your personal data. This enables you to ask us to suspend the processing of your personal data in the following scenarios: (a) if you want us to establish the data's accuracy; (b) when our use of the data is unlawful, but you do not want us to erase it; (c) when you need us to hold the data, even if we no longer require it, if you need it to establish, exercise, or defend legal claims; or (d) you have objected to our use of your data, but we need to verify whether we have overriding legitimate grounds to use it.

**Request the transfer** of your personal data to you or to a third party. We will provide to you, or a third party that you have chosen, your personal data in a structured, commonly used, machine-readable format. Note that this right only applies to automated information which you initially provided consent for us to use, or when we used the information to perform a contract with you.

**Withdraw consent at any time** when we are relying on consent to process your personal data. However, this will not affect the lawfulness of any processing carried out before you withdraw your consent. If you withdraw your consent, we may not be able to provide certain products or services to you. We will advise you if this is the case at the time you withdraw your consent.

### Contact Us

Full name of legal entity: Icon Health & Fitness, Inc.

Name and title of ICON's DPO: Charles Denyer, Associate General Counsel

E-mail address: [privacy@iconfitness.com](mailto:privacy@iconfitness.com)

Postal address: 1500 S. 1000 W. Logan, Utah 84321 USA

Telephone number: [1.866.608.1798](tel:18666081798)

## CALIFORNIA PRIVACY NOTICE

The California Consumer Privacy Act of 2018 (CCPA) requires that business disclose certain additional information about how it collects, uses, discloses and sells the personal data of a California resident. This California Privacy Notice is part of ICON's [Privacy Notice](#). **This section only applies to California residents.** **The rights discussed in this section do not extend to individuals who are not California residents.**

### California Residents' Rights Under the CCPA

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- The categories of personal information we collected about you over the past 12 months.
- The specific pieces of personal information we have collected about you over the past 12 months.
- The categories of sources from which the personal information is collected over the past 12 months.
- The business or commercial purpose for collecting or selling that personal information over the past 12 months.
- The categories of third parties with whom we shared your personal information over the past 12 months.
- If we disclosed your personal information for a business purpose, the personal information categories that each category of recipients obtained.
- If we sold your personal information for a business purpose, the personal information categories that each category of recipients purchased.

***Right to Request Deletion.*** Under the CCPA, California residents have the right to request that we delete any of your personal information that we have collected from you and retained, subject to certain exceptions. Once we receive and confirm your verifiable consumer request, we will delete your personal information from our records, and direct our service providers to do the same, unless an exception applies.

***Right to Opt-Out of Sale of Personal Information.*** Under the CCPA, California residents 16 years old or older have the right to direct businesses that sell personal information to not sell your personal information (the "right to opt-out").

***Right to Opt-In to Sales of Personal Information for Minors Under 16.*** Pursuant to the CCPA, we do not sell the personal information of California residents we actually know are less than 16 years of age, unless we receive affirmative authorization (the "right to opt-in") from either the consumer who is 13-15 years of age, or the parent or guardian of a consumer less than 13 years of age. Consumers who opt-in to personal information sales may opt-out of future sales at any time.

***Right to Non-Discrimination.*** Under the CCPA, California residents have the right not to be discriminated against for having exercised the rights established by the CCPA. We will not discriminate against you for exercising any of your CCPA rights.

We may offer you certain financial incentives permitted by the CCPA, or different prices, rates, levels, or quality of goods or services that are reasonably related to your personal information's value to the business. Participation in a financial incentive program requires your prior opt in consent, which you may revoke at any time. For more information about the CCPA-permitted financial incentives that we offer, see our [Notice of Financial Incentive](#).

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You may only make a verifiable consumer request to know or request for access twice within a 12-month period. The verifiable consumer request must include information that allows us to reasonably verify you are the person about whom we collected personal information or an authorized representative and describe your request in enough detail that we can properly understand, evaluate, and respond to it.

Upon receiving a request to know, we will confirm receipt within 10 days. If we are able to verify your request, we will make our best effort to respond within forty-five (45) days of our receipt of your request. If we require more time (up to 45 additional days), we will inform you of the reason and extension period in writing. We will not disclose information to you if we cannot verify your identity.

***Exercising Your Right to Request Deletion.*** For California residents to exercise the right to request deletion, you or your authorized agent may submit a verifiable consumer request by using the contact information below.

Upon receiving a request to delete, we will confirm receipt within 10 days. If we are able to verify your request, we will make our best effort to respond within forty-five (45) days of our receipt of your request. If we require more time (up to 45 additional days), we will inform you of the reason and extension period in writing. In our response, we will specify the manner in which we have deleted your personal information, in accordance with the CCPA. We will not delete information if we cannot verify your identity.

***Exercising Your Right to Opt-Out of Sale of Personal Information.*** For California residents to exercise the right to opt-out if we engage in selling your personal information, you or your authorized agent may submit a request to us by filling out the [Notice of Right to Opt-Out of Sale of Personal Information](#).

You may also exercise your right to opt-out by calling us at the toll-free phone number listed below.

We will act upon your request to opt-out within fifteen (15) days of receiving the request. We will instruct the third parties to whom the information has been sold in the 90 days prior to your request not to further sell the information, and we will notify you when this instruction has been completed.

We will not act upon a request from authorized agents if the agent does not submit proof that the agent has been authorized by you to act on your behalf. We will not act upon a request if we believe it is fraudulent.

Your consumer requests may be submitted by either:

— Calling us at [1.866.608.1798](tel:18666081798)

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### How We Verify California Residents' Requests to Know/Requests for Access and Requests for Deletion

We will not respond to requests to know/requests for access or requests for deletion unless we can verify your identity to a reasonable degree of certainty. To verify your identity, when feasible, we will use information about you that we already have; however, we may need to request additional information, which we will use only for the purposes of verification. We may also use a third-party identity verification service. The information we need to verify your request will depend on the nature and scope of your request. Upon receipt of your request, we will notify you if we need additional information from you to verify your request.

### Sale of Personal Information

In some circumstances, we may sell your personal data. We may sell and during the last 12 months we may have sold the following categories of personal data:

- **Identifiers:** we collect certain identifying information from you including first name, maiden name, last name, username, or similar identifier, marital status, title, date of birth, gender, contact information such as billing address, mailing address, e-mail address, and telephone numbers.
- **Customer Records Information:** this includes personal information defined by the California customer records law, such as address, telephone number, bank account, credit card number, physical information, and medical information.
- **Protected Class Information:** if you choose to include it in your profile, we will collect certain of characteristics of protected classifications under California or federal law, such as age, race, marital status, and medical conditions.
- **Commercial Information:** when you make purchases from us, we gather information about your purchasing history, about payments to and from you and other details of products and services you have purchased from us.
- **Biometric Information:** we may collect biometric information from you when you create your product profile or use our Services. This includes your health and exercise data, including sleep and nutritional data or other physical patterns or rhythms from your workouts or fitness goals. It may also include information you share about your workouts or fitness goals, such as videos of a workout. We may use information that you share to create a profile of your aspirations, goals and accomplishments to provide you with suggestions to help you reach the next level in your fitness challenge.
- **Internet or other electronic network activity information:** we collect certain electronic information including internet protocol (IP) address, your login data, browser type and version, time zone setting and

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- **Sensory data:** we will collect this information if you choose to share it, such as a video of your workout.
- **Inferences:** we use the information we collect about you to improve your experience when using our Services. This includes monitoring and complying with your preferences in receiving marketing from us and our third parties and your communication preferences. We also collect information about your social media interactions through our Services, including your public profile information, your social media connections, photos and “likes.”

The categories of third parties to whom this information may be or has been sold is:

### Internal third parties

Other companies in the ICON group act as joint controllers or processors, provide IT and system administration services, and undertake leadership reporting.

### External third parties

- Third parties for marketing purposes, including for analytics and the delivery of targeted advertising.

### Notices for California Residents

[Notice at Collection](#)

[Notice of Right to Opt-Out of Sale of Personal Information](#)

[Notice of Financial Incentive](#)

### How We Respond to Do Not Track Signals

We do not respond to Do Not Track signals.

### Shine the Light

California Civil Code Section 1798.83 permits users of the ICON sites that are California residents to request certain information regarding our disclosure of personal information to third parties for their direct marketing purposes.

## NOTICE AT COLLECTION OF PERSONAL INFORMATION

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### Personal Information We Collect About You

We collect personal information. In particular, we may collect the following **categories of personal information** from or about you:

- **Identifiers:** we collect certain identifying information from you including first name, maiden name, last name, username, or similar identifier, marital status, title, date of birth, gender, contact information such as billing address, mailing address, e-mail address, and telephone numbers.
- **Customer Records Information:** this includes personal information defined by the California customer records law, such as address, telephone number, bank account, credit card number, physical information, and medical information.
- **Protected Class Information:** if you choose to include it in your profile, we will collect certain of characteristics of protected classifications under California or federal law, such as age, race, marital status, and medical conditions.
- **Commercial Information:** when you make purchases from us, we gather information about your purchasing history, about payments to and from you and other details of products and services you have purchased from us.
- **Biometric Information:** we may collect biometric information from you when you create your product profile or use our Services. This includes your health and exercise data, including sleep and nutritional data or other physical patterns or rhythms from your workouts or fitness goals. It may also include information you share about your workouts or fitness goals, such as videos of a workout. We may use information that you share to create a profile of your aspirations, goals and accomplishments to provide you with suggestions to help you reach the next level in your fitness challenge.
- **Internet or other electronic network activity information:** we collect certain electronic information including internet protocol (IP) address, your login data, browser type and version, time zone setting and location, browser plug-in types and versions, operating system and platform, and other technology on the devices you use to access this website. We also collect information about how you use our website, products, and services.
- **Geolocation:** this information may be recorded when you use certain features of our apps, which may be uploaded to your profile when synced with your account.
- **Sensory data:** we will collect his information if you choose to share it, such as a video of your workout.
- **Inferences:** we use the information we collect about you to improve your experience when using our Services. This includes monitoring and complying with your preferences in receiving marketing from us and our third parties and your communication preferences. We also collect information about your social

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We will only use your personal information in a manner that is consistent with applicable laws. Most commonly, we will use the categories of personal information identified above for the following business purposes:

- When we need to **perform a contract** we are about to enter into or have entered into with you
- For the **provision of our products and services** or the operation of our business or a third party's business. All of our employees and contractors are required to follow our data privacy and security policies when handling personal information.
- Where it is **necessary for our legitimate interests** (or those of a third party), and your interests and fundamental rights do not override those interests
- When we need to **comply with a legal or regulatory obligation**
- Where we need to **protect your (or someone else's) interests**
- Where necessary in **connection with the sale, merger, acquisition** or other reorganization of our business
- For **marketing purposes**
- By creating an account with us, you agree that we may contact you for marketing purposes by phone, e-mail, mail, or text message, even if your number is on a do-not-call list or is a wireless number
- To **process transactions**

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Generally, for those consumers located in the European Union, we do not rely on consent as a legal basis for processing your personal data, other than in relation to sending third party direct marketing communications to you via e-mail or text message. You have the right to withdraw consent to marketing at any time by contacting us.

We will only use your personal information for the purposes for which we collected it, including where we reasonably consider that we need to use it for a reason that is compatible with the original purpose. If we need to use your personal information for an unrelated purpose, we will notify you as required by law.

Please note that we may process your personal information without your knowledge or consent where this is required or permitted by law.

## NOTICE OF RIGHT TO OPT-OUT



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### RIGHT TO OPT-OUT OF SALE OF PERSONAL INFORMATION

California residents may exercise the right to opt-out of our selling of your personal information by filling out the [Notice of Right to Opt-Out of Sale of Personal Information](#).

### "DO NOT SELL MY PERSONAL INFORMATION"

You may also exercise your right to opt-out by calling us at [1.866.608.1798](tel:18666081798).

You may use an authorized agent to submit a request to opt-out on your behalf if you provide the authorized agent written permission to do so. We will not act upon a request from authorized agents if the agent does not submit proof (your written permission) that the agent has been authorized by you to act on your behalf. We will not act upon a request if we believe it is fraudulent.

### NOTICE OF FINANCIAL INCENTIVE FOR CALIFORNIA RESIDENTS

This **Notice of Financial Incentive** is part of ICON's [Privacy Notice](#) and includes an explanation of financial incentives we offer California residents. This Notice of Financial Incentive applies solely to California residents. We adopt this Notice of Financial Incentive in accordance with the California Consumer Privacy Act of 2018 ("CCPA").

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#### Summary of Financial Incentives Offered

From time-to-time, we offer **coupons, discounted offerings, advance notices of sales** and other **special offerings** and the opportunity to enter into **contests and sweepstakes** to consumers that have opted-in to the receipt of marketing material from us by providing us with certain personal information, such as their name, an email address, and a street address.

We may offer discounted pricing for certain products or services in the form of coupons or promo codes. We offer these incentives to encourage consumers to try our products and services or to learn more about our offerings. We offer other incentives based on a consumer's purchase history or demographic data, such as advance notice of sales. We value the personal information collected in connection with these incentives by determining the approximate additional spending per consumer, per year compared to individuals that do not participate in our incentives.

#### Material Terms of Financial Incentive



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title, date of birth, and gender.

- **Contact data** includes billing address, mailing address, e-mail address, and telephone numbers.
- **Profile data** includes your username and password, purchases or orders made by you, your interests, preferences, feedback, and survey responses.
- **Product Profile** includes your health and exercise data, including sleep and nutritional data or other physical patterns or rhythms from your workouts or fitness goals. It may also include information you share about your workouts or fitness goals, such as videos of a workout. We may use information that you share to create a profile of your aspirations, goals and accomplishments to provide you with suggestions to help you reach the next level in your fitness challenge.
- **Marketing and communications data** includes your preferences in receiving marketing from us and our third parties and your communication preferences.
- **Social Media Application Data** includes your public profile information, your social media connections, photos and "likes."

### How to Opt-In to ICON's Financial Incentive Program

Participation in our financial incentive programs requires your prior opt-in consent. You can opt-in to participate in the financial incentives described by checking the box when you sign up for an account or otherwise indicating your consent when you request information from us.

### HOW TO WITHDRAW FROM ICON'S FINANCIAL INCENTIVE PROGRAMS

You may revoke your consent and withdraw from a financial incentive program at any time by doing one of the following:

- Calling us at [1.866.608.1798](tel:18666081798)
- Filling out the [Notice of Financial Incentive](#).

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# LEGAL

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Account

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Support

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English ▾

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Privacy notice

Terms of use

Do Not Sell My Personal Information

Customize cookie settings

Your California privacy rights

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FEEDBACK



# **EXHIBIT Z**

**Subject:** FedEx Shipment 772091681779: Your package has been delivered  
**Date:** Tue, 17 Nov 2020 11:03:35 -0600 (CST)  
**From:** [TrackingUpdates@fedex.com](mailto:TrackingUpdates@fedex.com) <[TrackingUpdates@fedex.com](mailto:TrackingUpdates@fedex.com)>  
**Reply-To:** [trackingmail@fedex.com](mailto:trackingmail@fedex.com)  
**To:** [Alton.Reich@StreamlineAutomation.biz](mailto:Alton.Reich@StreamlineAutomation.biz)

FedEx



Hi. Your package was  
delivered Tue, 11/17/2020 at  
10:01am.



Delivered to 1500 S 1000 W, Logan, UT 84321  
Received by S.CARLTON

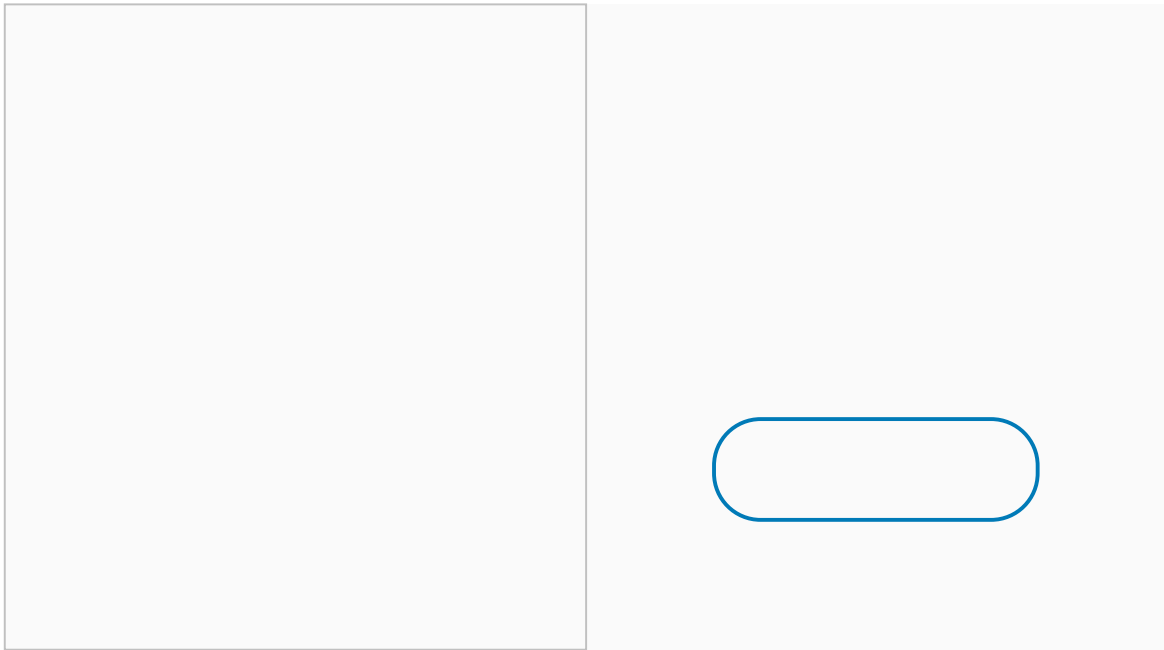
**OBTAIN PROOF OF DELIVERY**

<b>TRACKING NUMBER</b>	<a href="#">772091681779</a>
<b>FROM</b>	Streamline Automation, LLC 3100 Fresh Way HUNTSVILLE, AL, US, 35805
<b>TO</b>	ICON Health & Fitness, Inc. Scott Watterson 1500 S 1000 West Logan, UT, US, 84321
<b>SHIP DATE</b>	Mon 11/16/2020 05:11 PM
<b>DELIVERED TO</b>	Receptionist/Front Desk
<b>PACKAGING TYPE</b>	FedEx Envelope
<b>ORIGIN</b>	HUNTSVILLE, AL, US, 35805
<b>DESTINATION</b>	Logan, UT, US, 84321
<b>NUMBER OF PIECES</b>	1
<b>TOTAL SHIPMENT WEIGHT</b>	0.50 LB
<b>SERVICE TYPE</b>	FedEx Priority Overnight

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☐ Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 11:03 AM CST 11/17/2020.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

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Thank you for your business.

# **EXHIBIT AA**

**Subject:** FedEx Shipment 772091772480: Your package has been delivered  
**Date:** Tue, 17 Nov 2020 11:03:33 -0600 (CST)  
**From:** [TrackingUpdates@fedex.com](mailto:TrackingUpdates@fedex.com) <[TrackingUpdates@fedex.com](mailto:TrackingUpdates@fedex.com)>  
**Reply-To:** [trackingmail@fedex.com](mailto:trackingmail@fedex.com)  
**To:** [Alton.Reich@StreamlineAutomation.biz](mailto:Alton.Reich@StreamlineAutomation.biz)

FedEx



Hi. Your package was  
delivered Tue, 11/17/2020 at  
10:01am.



Delivered to 1500 S 1000 W, LOGAN, UT 84321  
Received by S.CARLTON



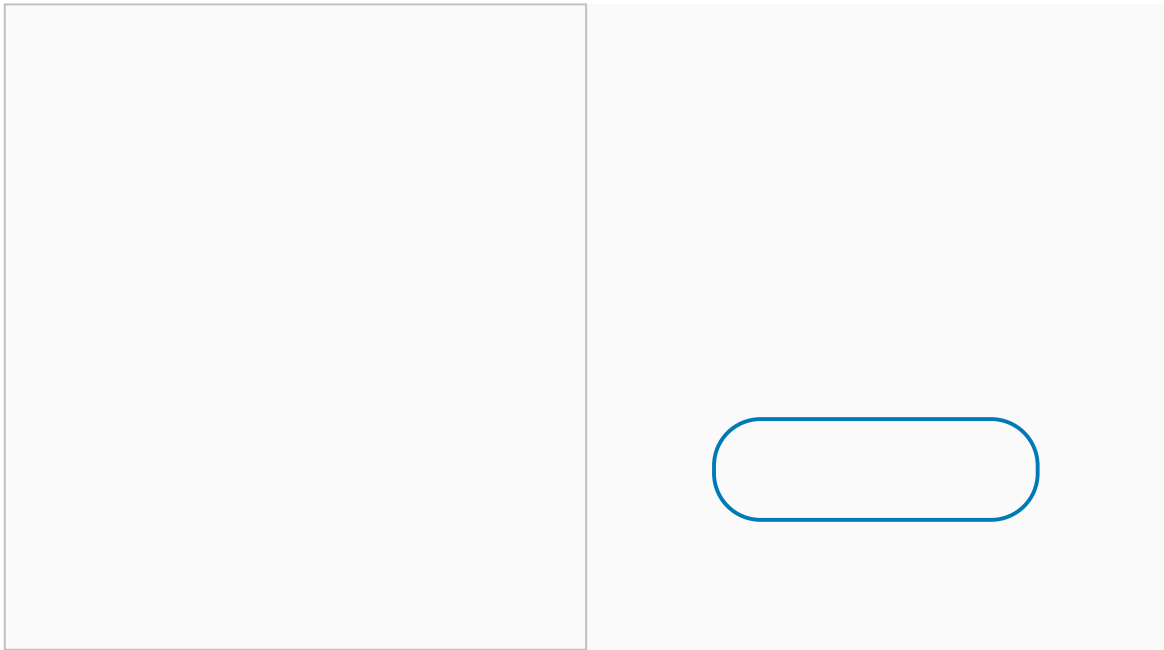
**OBTAIN PROOF OF DELIVERY**

<b>TRACKING NUMBER</b>	<a href="#">772091772480</a>
<b>FROM</b>	Streamline Automation, LLC 3100 Fresh Way HUNTSVILLE, AL, US, 35805
<b>TO</b>	ICON Health & Fitness, Inc. Everett Smith 1500 S 1000 West LOGAN, UT, US, 84321
<b>SHIP DATE</b>	Mon 11/16/2020 05:11 PM
<b>DELIVERED TO</b>	Receptionist/Front Desk
<b>PACKAGING TYPE</b>	FedEx Envelope
<b>ORIGIN</b>	HUNTSVILLE, AL, US, 35805
<b>DESTINATION</b>	LOGAN, UT, US, 84321
<b>NUMBER OF PIECES</b>	1
<b>TOTAL SHIPMENT WEIGHT</b>	0.50 LB
<b>SERVICE TYPE</b>	FedEx Priority Overnight

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☐ Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 11:03 AM CST 11/17/2020.

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Thank you for your business.

# **EXHIBIT AB**



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**November 16, 2020**

**VIA FedEx**

Mr. Scott Watterson  
Chief Executive Officer  
ICON Health & Fitness, Inc.  
1500 South 1000 West  
Logan, UT 84321

Mr. Everett Smith  
General Counsel  
ICON Health & Fitness, Inc.  
1500 South 1000 West  
Logan, UT 84321

Dear Mr. Watterson and Mr. Smith:

I write on behalf of Streamline Automation, LLC. It has come to our attention that ICON Health & Fitness, Inc. (including its subsidiaries) infringe at least the following Streamline patents and claims:

U.S. Patent No. 9,144,709	Claims 1-8, 10, 12
U.S. Patent No. 9,272,186	Claims 1-8, 10, 11, 13
U.S. Patent No. 9,586,091	Claims 1-8, 10, 11, 13, 16, 17

Though ICON is already aware of each of these patents—which it has repeatedly cited in its own patents—and its own infringing activities, a copy of each is attached.

By this letter, Streamline underscores ICON's knowledge that it is infringing these patents. In particular, ICON infringes these patents with its exercise bikes, rowers, ellipticals, and strength training products using iFit, including but not limited to: (1) exercise bikes such as the "NordicTrack Commercial S15i Studio Cycle," "NordicTrack Commercial S22i Studio Cycle," "NordicTrack Commercial VR21," "NordicTrack Commercial VR25," "NordicTrack Commercial



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VU 19,” “NordicTrack GX 4.4 Pro;” (2) rowers such as the “NordicTrack RW500” and “NordicTrack RW900;” (3) ellipticals such as the “NordicTrack FS7i,” “NordicTrack FS10i,” “NordicTrack FS14i,” “NordicTrack Commercial 9.9,” “NordicTrack Commercial 12.9,” “NordicTrack Commercial 14.9,” “NordicTrack SpaceSaver SE9i;” and (4) strength-training equipment such as the “NordicTrack Fusion CST,” “NordicTrack Fusion LT,” and “NordicTrack Fusion CST Pro.” We note that ICON also infringes these patents with various other products which implement the iFit functionality, including products sold under ICON’s Pro-Form and FreeMotion brands.

ICON’s own materials describe its infringing activities and products: <https://www.nordictrack.com/exercise-bikes>; <https://www.nordictrack.com/ellipticals>; <https://www.nordictrack.com/strength-training>; <https://www.nordictrack.com/rowing-machines>; <https://www.nordictrack.com/ifit>. The infringing products and features are also described in ICON’s product manuals, such as the “NordicTrack Commercial S15i Studio Cycle User’s Manual,” the “NordicTrack RW900 User’s Manual,” the “NordicTrack Commercial 12.9 User’s Manual,” and the “NordicTrack Fusion CST User’s Manual,” and in ICON’s advertisements, such as “The Duel | iFit Personal Training on NordicTrack | Commercial S22i Studio Cycle” at (<https://www.youtube.com/watch?v=cshybFUGgf8>) and “Interactive Personal Training at Home with NordicTrack” at ([https://www.youtube.com/watch?v=Up\\_4rlh9yhU](https://www.youtube.com/watch?v=Up_4rlh9yhU)). Through its manuals, websites, advertisements, etc., ICON expressly instructs its customers to use its products and iFit services in a manner which infringes Streamline’s patents. Indeed, ICON’s products and iFit services cannot be used for purposes other than infringing Streamline’s patents.

Streamline would be willing to discuss licensing the patents discussed above, and we appreciate your consideration and look forward to a prompt response addressing our concerns. Please feel free to contact me directly to discuss at your earliest convenience.

Sincerely,



Alton Reich

Streamline Automation, LLC

(256) 694-5063

[Alton.Reich@streamlineautomation.biz](mailto:Alton.Reich@streamlineautomation.biz)

Enclosures: U.S. Patent No. 9,272,186; U.S. Patent No. 9,586,091; U.S. Patent No. 9,144,709.